MASTER
NEGATIVE
NO. 94-82131-6

COPYRIGHT STATEMENT

Author:
U.S. Congress

Title:
Railroad consolidation

Place:
Washington, D.C.

Date:
1926

94-82131-6
MASTER NEGATIVE #

COLUMBIA UNIVERSITY LIBRARIES
PRESERVATION DIVISION

BIBLIOGRAPHIC MICROFORM TARGET

ORIGINAL MATERIAL AS FILMED - EXISTING BIBLIOGRAPHIC RECORD

U. S. *Congress. House. Committee on interstate and foreign commerce.*

Railroad consolidation. Hearings before the Committee on interstate and foreign commerce, House of representatives, Sixty-ninth Congress, first session, on H. R. 11212, a bill to promote the unification of carriers engaged in interstate commerce, and for other purposes. May 24, 25, 26, 27, June 3, 4, 8, 9, 10, 11, 15, 17, and 18, 1926. Parts 1–13. Washington, Govt. print. off., 1926.

iii, 514 p. incl. tables, 13 fold. maps. 23½cm.

James S. Parker, chairman.

1. Railroads—Consolidation. 2. Railroads—U. S. I. Title.

27–4340

RESTRICTIONS ON USE:

TECHNICAL MICROFORM DATA

FILM SIZE: 35mm REDUCTION RATIO: 12x IMAGE PLACEMENT: IA (IA) IB IIB

DATE FILMED: 6/16/94 INITIALS: W.W/PB

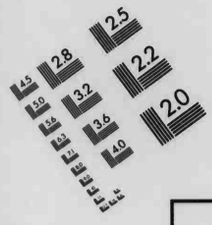
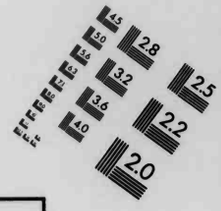
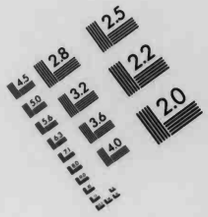
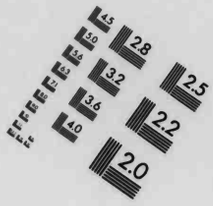
TRACKING # : MSH 01440

FILMED BY PRESERVATION RESOURCES, BETHLEHEM, PA.

2.0 mm ABCDEFGHIJKLMNOPQRSTUVWXYZ abcdefghijklmnopqrstuvwxyz1234567890

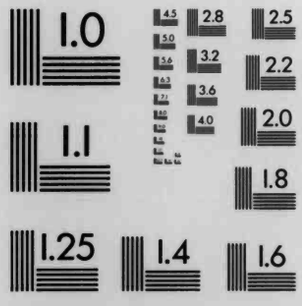
1.5 mm ABCDEFGHIJKLMNOPQRSTUVWXYZ abcdefghijklmnopqrstuvwxyz1234567890

PM-MGP 13″x18″
METRIC GENERAL PURPOSE TARGET
PHOTOGRAPHIC

150 mm

100 mm



ABCDEFGHIJKLMNOPQRSTUVWXYZ abcdefghijklmnopqrstuvwxyz1234567890

ABCDEFGHIJKLMNOPQRSTUVWXYZ abcdefghijklmnopqrstuvwxyz1234567890

ABCDEFGHIJKLMNOPQRSTUVWXYZ abcdefghijklmnopqrstuvwxyz 1234567890

ABCDEFGHIJKLMNOPQRSTUVWXYZ abcdefghijklmnopqrstuvwxyz 1234567890

1.0 mm

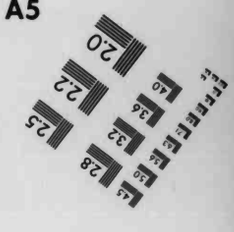
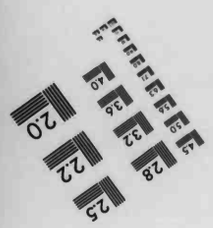
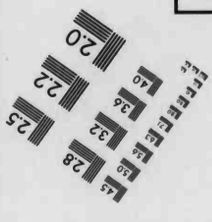
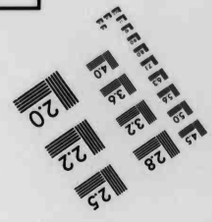
1.5 mm

2.0 mm

2.5 mm

A5

A4

PRECISION℠ RESOLUTION TARGETS

Century

1303 Geneva Avenue
St. Paul, MN 55119

ABCDEFGHIJKLMNOPQRSTUVWXYZ
abcdefghijklmnopqrstuvwxyz
1234567890

4.5 mm

ABCDEFGHIJKLMNOPQRSTUVWXYZ

RAILROAD CONSOLIDATION

HEARINGS

BEFORE

THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE HOUSE OF REPRESENTATIVES

SIXTY-NINTH CONGRESS

FIRST SESSION

ON

H. R. 11212

A BILL TO PROMOTE THE UNIFICATION OF CARRIERS ENGAGED IN INTERSTATE COMMERCE, AND FOR OTHER PURPOSES

MAY 24, 25, 26, 27, JUNE 3, 4, 8, 9, 10, 11, 15, 17, AND 18, 1926

PARTS 1-13

WASHINGTON
GOVERNMENT PRINTING OFFICE
99790 1926

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

HOUSE OF REPRESENTATIVES

SIXTY-NINTH CONGRESS, FIRST SESSION

JAMES S. PARKER, New York, *Chairman*

JOHN G. COOPER, Ohio.
EDWARD E. DENISON, Illinois.
SCHUYLER MERRITT, Connecticut.
CARL E. MAPES, Michigan.
WALTER H. NEWTON, Minnesota.
HOMER HOCH, Kansas.
ADAM M. WYANT, Pennsylvania.
OLGER B. BURTNESS, North Dakota.
JOHN E. NELSON, Maine.
JOHN D. FREDERICKS, California.
T. J. B. ROBINSON, Iowa.
THOMAS W. PHILLIPS, Jr., Pennsylvania.
M. C. GARBER, Oklahoma.
ALBEN W. BARKLEY, Kentucky.
SAM RAYBURN, Texas.
GEORGE HUDDLESTON, Alabama.
CLARENCE F. LEA, California.
TILMAN B. PARKS, Arkansas.
ROBERT CROSSER, Ohio.
ASHTON C. SHALLENBERGER, Nebraska.
PARKER CORNING, New York.
JACOB L. MILLIGAN, Missouri.

ELTON J. LAYTON, *Clerk*
ROBERT B. BENNETT, *Assistant Clerk*

CONTENTS

Statement of— Page
Alfred P. Thom, Esq 7, 353, 377, 403, 427
Dr. C. S. Duncan 11, 33
Robert S. Lovett, Esq 71, 95
Hon. Henry C. Hall 131, 336
Ben B. Cain, Esq 161, 321
Mr. Elliot H. Goodwin 193
Mr. John E. Oldham 285
Memorandum, submitted by—
Ellsworth C. Alvord, assistant counsel, Office of House Legislative Counsel 452
Communications from—
Hon. John J. Esch 464
Mr. John E. Oldham 472, 476, 481
Maps .... Follow 514

RAILROAD CONSOLIDATION

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Monday, May 24, 1926.

The committee met at 10 o'clock a. m., Hon. James S. Parker (chairman) presiding.

The CHAIRMAN. The committee will please come to order. We have under consideration H. R. 11212 which reads as follows:

[H. R. 11212, Sixty-ninth Congress, first session]

A BILL To promote the unification of carriers engaged in interstate commerce, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the interstate commerce act, as amended, is amended—

(1) By inserting after the enacting clause thereof the following heading:

"TITLE I.—REGULATION OF CARRIERS"

(2) By adding at the end of such act a new title to read as follows:

"TITLE II.—UNIFICATION OF CARRIERS

"DEFINITIONS

"SEC. 201. As used in this title—

"(1) The term 'interstate or foreign commerce' means commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession or the District of Columbia, but through any place outside thereof; or within any Territory or possession or the District of Columbia.

"(2) The term 'carrier' means—

"(a) A common carrier engaged in the transportation in interstate or foreign commerce of passengers or property wholly by railroad or partly by railroad and partly by water, within the continental United States, subject to Title I of this act, including sleeping-car companies and express companies;

"(b) A corporation having power to engage, or owning property used or held for use, in such transportation.

"(3) The term 'securities' includes shares, bonds, or other evidences of interest or indebtedness.

"(4) The term 'voting securities' include all outstanding shares of capital stock (whether or not such shares have voting privileges), and includes all other outstanding securities the holders of which under the terms of a mortgage deed of trust or other contract have the right to vote upon the question to be determined.

"DECLARATION OF POLICY

"SEC. 202. It is hereby declared to be the policy of Congress, in order that an adequate and efficient transportation service may be maintained in the United States and necessary weak and short lines be preserved, to authorize and encourage the unification, through any method specified in sections 203, 204, and 205 of this title, of the property of carriers into a number of strong and efficient and well balanced systems which will, as far as practicable, maintain

the existing routes and channels of trade and commerce, and preserve, as between themselves, the advantages of effective competition in service, so that the properties of the carriers in each system shall ultimately be managed and operated and owned or controlled by a single corporation, economy be promoted, unnecessary duplications and wasteful competition eliminated, better service afforded, and the traffic moved at the lowest rates compatible with the maintenance of adequate and efficient transportation service. In order that this policy may be carried out, the unification of the properties of carriers, directly or indirectly, otherwise than in accordance with the provisions of this title, after the enactment of the railroad consolidation act of 1926, shall be unlawful.

"UNIFICATION UNDER AUTHORITY OF THIS TITLE

"SEC. 203. (1) In order to bring about such unification, two or more carriers shall have power to agree on a plan therefor to be carried out under the authority of this title.

"(2) The plan may provide for one or more of the following:

"(a) An acquisition by or transfer to one of the petitioning carriers or another corporation (by purchase, sale, exchange, lease, or otherwise) of all or a part, or the right to operate all or a part, of the properties and franchises of one or more carriers, and if so desired, the disposition of all or a part of the remaining assets of any of such carriers.

"(b) A corporate merger or consolidation of two or more carriers into one of the petitioning carrier or any other carrier corporation.

"(c) An acquisition of securities (by purchase, sale, exchange, lease, or otherwise) issued by a carrier, if such acquisition is proposed to be made as part of a plan to effect a unification under subdivision (a) or (b) of this paragraph.

"PROCEDURE

"SEC. 204. (1) Two or more carriers may petition the commission for the approval of a plan to be carried out under the authority of this title if the boards of directors of such carriers have entered into a joint agreement, under their respective corporate seals, proposing such plan. The petition shall set out the plan in such detail as the commission may require.

"(2) Such joint agreement shall set out—

"(a) The terms and conditions of the plan and the methods by which it is to be effected.

"(b) A statement of the financial plan and of the securities, if any, to be authorized and to be issued in carrying out such plan, the substantial rights, privileges, powers, and immunities granted or denied the holders of one class of shares that are not equally granted or denied the holders of any other class of shares, and the terms on which such securities are to be issued.

"(c) Such other provisions and details not inconsistent with this act as the board of directors may deem necessary or appropriate, or as the commission may require.

"(3) Any such joint agreement shall be held to be entered into by the board of directors of any such carrier if a majority of the number of such directors in office vote therefor.

"(4) A copy of the joint agreement, entered into in accordance with the provisions of this section, shall be filed as a part of the petition.

"ACQUISITION OF SECURITIES BY A CARRIER

"SEC. 205. Any carrier, in order to bring about a unification through the securing of control by the acquisition of securities, in accordance with the policy declared in section 202, may petition the commission for the approval of a plan to be effected by the acquisition by such carrier of securities issued by any other carrier or carriers, if such plan has been adopted by the board of directors of the petitioning carrier. Such petition shall set out the plan, including the terms, methods, and purpose of the proposed acquisition and the issue of any new securities that may be involved therein, in such detail as the commission may require.

"NOTICE AND HEARING

"SEC. 206. (1) The commission shall give reasonable notice of the time and place for a public hearing to each of the carriers filing, or joining in the filing of, a petition under this title, and to the governor of each State in which is located any part of the lines of any of such carriers. Such carriers, and any governor so notified, or any representative of the State designated by him, and any other person having an interest, shall be afforded a reasonable opportunity to be heard.

"(2) In any proceeding upon a petition filed under this title the commission may, in its discretion, without separate hearing, take any action which it is authorized to take under the provisions of section 20a of this act; and in any proceeding upon a petition filed under section 204 the commission may, in its discretion, without separate hearing, take any action which it is authorized to take under the provisions of paragraphs (18), (19), or (20) of section 1 of this act.

"(3) Prior to or at the time a petition is called for hearing, but not thereafter except for good cause shown, any carrier may file with the commission an intervenor's petition praying that it be made a party to the proposed unification.

"ORDER OF THE COMMISSION

"SEC. 207. (1) If the commission finds that the provisions of this title have been complied with, and is of the opinion, after such hearing, that the public interest in adequate and efficient transportation service and the policy of Congress herein declared, will be promoted thereby, the commission shall enter an order approving the plan, on the terms and conditions and by the methods set forth in the petition, or with such modifications thereof, or upon such terms, conditions, and methods, as it may prescribe as necessary in the public interest. If the order of the commission (whether or not any intervenor's petition has been filed) imposes as a condition to the approval of the proposed unification that a carrier not joining in filing the petition be made a party to the unification, the carriers filing the petition may report to the commission the efforts made by them to comply with the condition; and if, after hearing, the commission is of opinion that the carrier that is to be made a party is insisting on unreasonable terms, the commission may revoke or modify the condition or prescribe the terms on which the carrier may be made a party to the proposed unification.

"(2) The carriers and the commission shall give due consideration to the inclusion in the plan of short and weak carriers in the territory involved; and in order that the policy declared in section 202 of this title may be carried out, the commission is directed to make and have available for its use, a study of the short and weak carriers.

"CONSENT OF CARRIERS

"SEC. 208. (1) The order of the commission under section 207 shall not become effective unless the board of directors and the holders of the voting securities of each of the carriers designated therein, or, in the case of a petition under section 205, the board of directors of the petitioning carrier, consent thereto.

"(2) A board of directors of a carrier shall be held to have consented thereto if a majority of the number of such directors in office vote for the adoption of the plan, as approved.

"(3) The holders of the voting securities of any such carrier shall be held to have consented thereto if the holders of a majority in amount of such voting securities, present in person or by proxy at an annual or special meeting, vote for the adoption of the plan, as approved. Notice of such stockholders' meeting shall be given, and such meeting shall be held and conducted, in any manner lawful for an annual or special meeting (as the case may be) of the stockholders of such carrier.

"(4) A certificate for each carrier, under its corporate seal, signed by its president or one of its vice presidents, and attested by its secretary or an assistant secretary, and duly acknowledged before a notary public by such president or vice president and secretary or assistant secretary, that its board of directors and, when required, the holders of its voting securities have so consented, shall be filed with the commission and shall be prima facie evidence of the facts so certified.

"EFFECTIVE DATE OF ORDER OF THE COMMISSION

"SEC. 209. The order of the commission approving such plan shall become effective upon the certification by the commission that the board of directors and the holders of the voting securities of each of the carriers designated therein have consented thereto in the manner provided in section 208.

"EFFECT OF ORDER OF THE COMMISSION

"SEC. 210. (1) On and after the effective date of the order of the commission approving such plan, or of an order of the commission (whether entered before or after the enactment of this title) approving an acquisition of control, each carrier designated in any such order shall have authority and power to carry into effect, and to do any and all acts necessary or appropriate in order to carry into effect, such plan or acquisition, in accordance with such order; and such carrier and its officers and directors shall be relieved from the operation of the 'antitrust laws' as designated in section 1 of the act entitled 'An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, and the operation of the first sentence of paragraph (12) of section 20a of this act; from all other restraints and prohibitions of any other law of the United States; and from any restraints or prohibitions of the laws or constitution of any State or any decision or order of any State authority—in so far as may be necessary to enable such carrier and its officers and directors to enter into and carry into effect such plan, or to make such acquisition, or to hold, maintain, and operate any properties, and to exercise any franchises, whether originally its own or acquired by it pursuant to such plan.

"(2) If the plan provides for an acquisition by or transfer to one of the petitioning carriers or another corporation as referred to in subdivision (a) of paragraph (2) of section 203, such acquiring carrier or corporation, on and after the effective date of the order of the commission, shall have power, in accordance with the terms and conditions and by the methods, if any, set forth in such order, to issue, sell, or exchange securities in accordance with the order of the commission; to hold, maintain, and operate any properties, and to exercise any franchises, acquired by it pursuant to such plan; to carry on and to do any business authorized by its franchises, whether originally its own or acquired by it pursuant to such plan, and generally shall have all other powers necessary or appropriate to carry into effect in all respects the plan approved by the commission.

"(3) If the plan provides for a corporate consolidation or merger of two or more carrier corporations to be effected under the authority of this title, such corporations, on and after the effective date of the order of the commission, shall be held to be consolidated or merged, and the constituent corporations and the resulting corporation may proceed to carry out the details thereof in accordance with such order, and the resulting corporation shall have authority and power to carry into effect, and to do any and all acts necessary or appropriate in order to carry into effect, such plan, to exercise its franchises, and to transact and carry on business in accordance therewith.

"(4) The entry of any order by the commission under this title and the certification by the commission under section 209 shall be conclusive evidence that the carriers designated in such order have complied with those provisions of this title which are conditions precedent to the entry of such order and such certification.

"(5) The title to the real estate, either by deed or otherwise, vested in any of the petitioning or of the constituent corporations shall not be held to revert or to be in any way impaired by reason of this title or of anything done under the provisions of this title or an order of the commission entered thereunder.

"EFFECT OF CORPORATE CONSOLIDATION UNDER THIS TITLE

"SEC. 211. (1) Upon the effective date of the order of the commission in the case of a plan presented for a corporate consolidation or merger of two or more carrier corporations (hereinafter referred to as the 'constituent corporations') into one corporation (hereinafter referred to as the 'resulting corporation'), effected under the authority of this title and except as restricted or limited in the origianl or modified joint agreement, or in the petition, or in the order of the commission—

"(a) The resulting corporation shall have all and singular the rights, privileges, powers, immunities, exemptions, and franchises of each of the constituent corporations; and it shall have all powers necessary or convenient to carry into effect any plan approved by the commission under this act and to carry on and do the business authorized in its franchises;

"(b) The resulting corporation, in accordance with the terms and conditions and by the methods set forth in such order, shall have power to issue, sell, or exchange securities;

"(c) All property, real and personal, and all debts due on whatever account, including stock subscriptions and other things in action, belonging to each of the constituent corporations shall be held to be transferred to and vested in the resulting corporation without further act or deed, as effectually as they were vested in any constituent corporation;

"(d) All debts, liabilities, and duties of each of the constituent corporations shall thenceforth attach to the resulting corporation, and become and be its debts, liabilities, and duties, and be enforceable against it to the same extent as if such debts, liabilities, and duties had been incurred or contracted by it.

"(2) In the case of any such consolidation effected under the authority of this title, the rights of creditors and all liens upon the property of any of the constituent corporations shall be preserved unimpaired, and the respective corporations shall be deemed to continue in existence so far as may be necessary to preserve the same.

"(3) Any action or proceeding pending by or against any such constituent corporation may be prosecuted to judgment as if such consolidation had not been effected, but the resulting corporation may, upon its motion, be made a party thereto.

"DISSENTING SECURITY HOLDERS

"SEC. 212. (1) In the case of any plan proposed by two or more carriers under section 203, any holder of a voting security issued by any carrier a party to the plan, who did not vote for the adoption of the plan, may, within ninety days after the annual or special meeting at which the holders of the voting securities of such carrier consented thereto, notify such carrier in writing that he does not assent. Any such holder who does not so notify such carrier within such time shall be held to have consented to such order.

"(2) The voting securities issued by any carrier, a party to a plan under section 203, and held by any such nonassenting holder shall, if the plan involves the retirement of his security or the surrender of his security in exchange for any other security, be purchased by the corporation which is to manage and operate and own or control the properties, or, if for any reason not so purchased, shall be acquired by condemnation by such corporation, in accordance with the provisions of section 213.

"RIGHT OF EMINENT DOMAIN

"SEC. 213. (1) The corporation authorized to acquire by condemnation the securities of any nonassenting holder, under the provisions of section 212, shall, unless the securities are purchased pursuant to section 212, petition the United States district court for a judicial district within a State in which the carrier which issued the securities is chartered, for the appointment by the court of the Interstate Commerce Commission as a board of appraisers to determine and report to the court the value of such securities.

"(2) If such corporation fails to purchase or to institute and maintain condemnation proceedings, any such nonassenting holder may, after the expiration of six months after the date on which he gave notice, in accordance with paragraph (1) of section 212, institute in his behalf proceedings for the condemnation by the corporation of the voting securities held by him. Such proceedings shall be had in the court which would have had jurisdiction of such proceedings if instituted by the corporation. All costs attaching to such proceedings shall be assessed against the corporation.

"(3) Any corporation authorized by an order of the commission entered under this title to acquire any property other than securities, or any right or interest in any such property, held or enjoyed without power of assignment or transfer, may petition the United States district court for the judicial district in which such property is located, or of which the owner of such property, right, or interest is an inhabitant, for the appointment by the court of the Interstate Commerce Commission as a board of appraisers to determine and report to the court the value thereof. If such property is located in the District of Columbia, application may be made to the Supreme Court of the District of Columbia.

"(4) The United States District Courts and the Supreme Court of the District of Columbia are hereby given jurisdiction to hear and determine, by suit in equity, any petition for condemnation under this section, and to enter appropriate orders of condemnation therein, and it shall be the duty of the commission, or a division thereof, upon any such appointment, to act as a board of appraisers. While acting as a board of appraisers the commission shall have the powers and duties of a master in chancery, but the commission shall not be entitled to the compensation allowed masters in chancery. Expenditures of the commission

while acting as a board of appraisers shall be payable out of any appropriation available for the expenditures of the commission under this title.

"(5) The practice, pleadings, forms, and modes of proceedings for suits in equity for condemnation under this section shall conform as nearly as may be to the practice, pleadings, forms, and modes of proceedings in other suits in equity, and the powers of the courts of the United States to prescribe rules for suits in equity shall apply to suits in equity for condemnation under this section to the same extent as they apply to other suits in equity; except that—

"(a) All, or any number of, the nonassenting holders of voting securities issued by any one carrier may be joined in one proceeding;

"(b) Notice of any such petition shall be given the holders of the secutities or the owners of the property to be condemned either by personal service, or, if for good cause shown permitted by the court, by publication at least once a week for four successive weeks in a newspaper published in the judicial district or in the District of Columbia (as the case may be);

"(c) Reasonable notice and opportunity to be heard shall be afforded each such holder or owner by the board of appraisers, in such manner as the board or the court may prescribe;

"(d) The report of the board shall be treated by the court and proceeded on in the same manner as the report of a master in chancery.

"(6) Upon the payment of the amount of the award, or in the case of refusal to recive the amount, then upon the deposit thereof with the clerk of the court, the security or property shall be held to be transferred to the petitioning carrier or corporation and to have become its security or property. In case of failure to pay the amount awarded within six months after the judgment or decree making the award has become final, final process to execute the award may be had by writ of execution in the form used by the court in suits of common law in actions of assumpsit.

TAXATION

"SEC. 214. No tax shall be levied or collected under any revenue law of the United States, or by or under the authority of any State or any political subdivision thereof, in respect of any issuance, sale, delivery, or transfer of any security or any agreement to sell, or memorandum of sale of, any security, or any grant, assignment, transfer, or other conveyance of any interest in real or personal property, in respect of the incorporation or reincorporation of any carrier, or in respect of any other means or proceeding necessary or appropriate to carry a unification into effect, if in pursuance of a unification approved by the commission under this section. Gain from the sale or other disposition of property, or income from any distribution, in connection with any such unification, shall not be subject to tax by or under the authority of any State or any political subdivision thereof. Any such unification shall be held to be a reorganization within the meaning of that term as used in Part I of Title II of the revenue act of 1926.

"APPLICATION OF EXISTING LAWS

"SEC. 215. (1) The provisions of section 20a, other than those of paragraph (10), shall not apply to any issuance of securities, or the assumption of any obligation or liability in respect of any securities, if in accordance with the terms and conditions of an order of the commission issued under this title, approving a plan.

"(2) The provisions of paragraphs (18), (19), and (20) of section 1 shall not apply to any extension, enlargement, or abandonment of properties, if in accordance with the terms and conditions of an order issued by the commission under this title, approving a plan, nor shall such paragraphs apply to any construction, acquisition, or operation of lines or transportation over such lines, in pursuance of the extension, enlargement, or abandonment.

"(3) Any of the evidence included in the record of the commission in its proceedings under paragraph (2), (4), or (5) of section 5 and any abstract or written materials made by the commission and based upon such evidence, shall be preserved and shall be available to any may be used by the commission in its proceedings upon a petition filed under this title; but any such evidence, abstract, or materials so used shall, by reference or otherwise, be made a part of its record in such proceedings.

"SEC. 216. Upon the expiration of seven years from the passage of the railway consolidation act of 1926, it shall be the duty of the commission to report to Congress the extent to which unifications have taken place in accordance with act, and, in the light of conditions then existing, its recommendations as to further proceedings.

"SEC. 217. Paragraphs (2), (4), (5), and (6) of section 5 of the interstate commerce act are hereby repealed. The commission may, from time to time, for good cause shown make such orders, supplemental to any order made under paragraph (2) of section 5 prior to its repeal, as the commission may deem necessary or appropriate. Any action taken, under paragraph (2) of section 5, prior to its repeal, whether taken by the commission or in pursuance of an order of the commission made prior to its repeal, shall, notwithstanding its repeal, have the same effect after the enactment of the railway consolidation act of 1926 as though such act had not been passed.

"SEPARABILITY OF PROVISIONS

"SEC. 218. If any provision of this title is declared unconstitutional, or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the title and of the application of such provision to other persons and circumstances shall not be affected thereby.

"SHORT TITLE

"SEC. 219. This title may be cited as the 'Railway consolidation act of 1926.'"

On the desk of each of the members has been put the report of the Interstate Commerce Commission on this bill. The Interstate Commerce Commission are holding hearings on the Smith-Hoch bill this week and they ask not to be called until some time next week in person, with which request I complied. But there is a letter from Mr. Esch regarding their opinion of this bill, of which they have approved in the main, with the exception of a few changes which are not fundamental.

Mr. HUDDLESTON. I have not as yet read this letter. It contains about 15 or 20 pages. It would aid me greatly if I knew what the law now is with reference to consolidation, as to what the limitations are. If we start out without knowing that, we are under some handicap.

The CHAIRMAN. I think that probably Colonel Thom will discuss that, Mr. Huddleston.

STATEMENT OF ALFRED P. THOM, GENERAL COUNSEL, ASSOCIATION OF RAILWAY EXECUTIVES, WASHINGTON, D. C.

Mr. THOM. I did not quite hear what Mr. Huddleston said.

Mr. HUDDLESTON. I said, Colonel, that I, at least, do not know—and I do not know that I might be bold enough to say that I think that is the general situation—what the law now is with reference to consolidations, as interpreted by the commission. To understand the proposed changes, that would seem to be the first step. We have not had a chance to see what the commission has said as yet—at least, I have not.

The CHAIRMAN. Nobody has, Mr. Huddleston. I was afraid those letters might be mislaid if they were sent to your offices, and I particularly wanted to have each member have one in his hands. Of course, the members may take them to their offices and use them.

Mr. THOM. Mr. Chairman, it is not my purpose to make the opening statement in respect to this matter, but in reply to what Mr. Huddleston said, I may briefly state what I understand the present situation is.

The policy of consolidations has been adopted by Congress in the transportation act, and that is dealt with in two aspects in that act.

One will be found in paragraph 2 of section 5, and the other in the paragraph beginning with 4, and following along to the end of the treatment of that question in the transportation act.

Paragraph 2 of section 5 is as follows:

> Whenever the commission is of opinion, after hearing, upon application of any carrier or carriers engaged in the transportation of passengers or property subject to this act, that the acquisition, to the extent indicated by the commission, by one of such carriers of the control of any other such carrier or carriers either under a lease or by the purchase of stock or in any other manner not involving the consolidation of such carriers into a single system for ownership and operation, will be in the public interest, the commission shall have authority by order to approve and authorize such acquisition, under such rules and regulations and for such consideration and on such terms and conditions as shall be found by the commission to be just and reasonable in the premises.

Then, beginning with paragraph 4 of the same section, there is a requirement that the commission shall proceed at once to divide the United States, or the railroads of the United States, into a given number of systems, that they should have hearings on their proposals, and thereupon, after that division has been made, there should be no consolidation of railroads except in accordance with the plan as outlined and established by the commission.

The commission has been at work on such a plan since the passage of the transportation act. They have not yet completed it. In the opinion of observers and, I believe, in the opinion of the commission itself, it is impracticable for them to do this, to accomplish that work. They are asking to be relieved of the duty. They are not convinced, I assume, although I, of course, am not a spokesman for the commission, that even if they had such a plan that it would be practicable to impose it upon the transportation facilities of the country.

It would be artificial. It might not be possible from a financial standpoint, and it might therefore turn out to be an obstacle instead of an aid to carry out the policy which Congress has adopted favoring consolidation.

The provisions of paragraph 2 of section 5 I always regarded as an ad interim method of dealing with the question of the transportation facilities of the country, so as not to freeze them as they were at the time that this act was passed, until a plan of the commission could be adopted and proceedings might be had pursuant to it.

If you will notice, it deals with the question of acquisition of control, and they are required to be, under the terms of the act, such control as not to amount to a consolidation.

On the face of the law, the distinction is drawn between those things which are consolidation and those things which are the acquisitions of property by lease, purchase of stock, or other methods of control which do not amount to a consolidation.

A good many persons—and I do not think that I am divulging any confidence when I say that even so eminent an authority on the subject of consolidations as Senator Cummins has become very much alarmed at the extent to which the commission is permitting paragraph 2 of section 5 to be used for the unification of property.

He, I think, does not see much difference between what the commission is permitting and what the law says can be done under paragraph 4 and following, of this section.

For example, in this Nickel Plate matter there was a suggestion of a lease of 999 years, and these properties were to be brought together

for a period, say, of that length of time. Well, he did not regard that as an ad interim method of dealing with the situation, but as an alternative method, as construed by the commission, and he, I know, is very much opposed to the use of paragraph 2 of section 5 as an alternative method of consolidations.

He had always thought that it was an ad interim method of dealing with these railroad companies, so that the natural growth, not amounting to consolidation, might not be impeded, while the general policy of Congress in favor of consolidation was carried out through the method prescribed in the transportation act.

You will therefore observe that in Senator Cummins's bill he repeals paragraph 2 of section 5, and I think it is fair to assume that the reason which I have now given is the reason which actuated him to take that position, because he has never anticipated that it should be an alternative method of consolidation, but merely as an ad interim way of dealing with practical problems as they arose.

Without going into the statement that I hope to be allowed to make at a later hearing, I wish to say that the practical difficulty with the present situation is that there is no method prescribed by the Federal law by which the policy of the Federal Government in favor of consolidation may be carried out.

There are obstacles in the laws of many of the States, not primarily obstacles in respect to antitrust laws, because they are disposed of by this act, but obstacles in the way of the lack of machinery—corporate machinery—to carry out a policy which Congress has said is the policy of the country in respect to consolidations.

In some of the States lawyers think that such machinery does exist. Manifestly, the lawyers who were advising the Nickel Plate people thought that in that group of States there was State power to carry this matter of consolidation into effect. But in some of the other States there is none at all.

If you had consolidations on your book as you have, if you had the map and plan of the Interstate Commerce Commission in effect, as you have not and probably never will have, but if it were in effect to-day, still the question would arise how to consummate, how to carry out the plan which the Interstate Commerce Commission said ought to be done in the interests of the country.

Now, therefore, manifestly the need of this situation is a need of machinery which shall be available to the various companies which it is found should be consolidated in the public interest, to carry that into effect. And I want to say to you gentlemen that that matter of machinery has been the subject, I believe, of greater and I hope of more intelligent criticism than any other matter which has ever been or will likely be presented for your consideration.

For two years, at least, the general counsel of every railroad in the country have had that subject under consideration—the legal machinery of how to carry a consolidation that Congress and the people of the United States wanted to carry into effect, and that it has been subjected to the test of every railroad in the country, through its legal department, as to what the machinery should be in order to take care of that situation.

I have participated in all of those conferences. I have received criticisms from every part of the country, and I believe that in

Senator Cummins's bill and this bill the machinery which is deemed necessary is practically provided.

So that when consolidation is brought forward, is carried before the Interstate Commerce Commission and is approved, either approved as it is presented or approved with such modifications as the Interstate Commerce Commission may think desirable and shall impose in the shape of conditions—when it gets to that final form, the matter of carrying it into effect shall be provided in such a way as to make it effective.

When we get to the question of consolidations which, as I said, has already been adopted as a policy by Congress, and if that still is the policy of Congress, then I suppose there is no doubt in anybody's mind that a consolidation which by the authorities of the country, the Interstate Commerce Commission, has been thought in the public interest, should have a practical and adequate method of carrying it into effect.

Now, as I say, this bill deals with that. The Cummins bill deals with that and seeks to provide the powers whereby an approved consolidation shall be carried into effect. Both of these bills provide that there shall be no consolidation that is not approved by the Interstate Commerce Commission as in the public interest.

They both provide that the Interstate Commerce Commission, in considering any proposal may say, "This is not approved unless you comply with this condition." That condition may be that you take in some road that is omitted in the original proposal. They say, "We will approve this, but you must take in road A B, which will be left in a position where it can not adequately serve the public unless it is made a part of this plan."

Then there can be no consolidation under either of these bills unless that provision is complied with.

Mr. WYANT. That is in effect a compulsory consolidation as to a part of the system, is it not?

Mr. THOM. It would not be compulsory; it would be a condition that would stop you unless you complied with it. I am drawing a distinction between compulsion which would make you go ahead anyhow and——

Mr. WYANT (interposing). If the part that they want to take in is essential to the successful operation of the road and it can be taken in only upon condition that they take in a piece of road that is not profitable, in effect that is compulsion: "If you want this section, you must take the other."

Mr. THOM. "If you want it badly enough, you must take it." It is a condition precedent; that is what it is. It is a condition on which you must either stop or must comply with.

There is, manifestly, this situation. A railroad attached by condition to a proposal and plan of consolidation would at once find itself in the poistion of holding the thing up unless you could comply with that condition. They would be at once in the position of making an artificial use of their power in that regard, because they would have the power under the order of the commission to say, "You can not go a step until you get this property."

They would then be in a position, perhaps, of being able to demand unreasonable terms in respect to the acquisition of that particular property.

Both of these bills provide that in that event, the applicants for consolidation may carry that situation back to the commission, explain what they have done in regard to trying to carry out the condition and then the commission can consider that condition anew and can impose terms on this road which is to be added which it must submit to if it is to avail of the condition.

I just refer to that as one of the practical aspects of the case, because I think at the outset it ought to be understood that this whole plan contemplates action by the commission, declaring any proposal in the public interest, before it can be done at all, and then that its power is not confined to a yes or to a no, but it can say "yes, on condition," and shall change any part of the proposal that it may deem necessary in the public interest before its approval can be availed of. And when that is done, then the applicants must determine the question as to whether or not they will go forward under the conditions prescribed or drop the matter where it is because the conditions in their opinion are too onerous and too hurtful.

I do not desire, Mr. Chairman, at this time to discuss this question at length. I have asked Doctor Duncan, who is associated with me, and who was at one time professor of economics in the University of Chicago and who is author of a book on business research and on marketing, to develop for the committee the economic aspects of this matter, so that we may have that background when we get to discussing the proposals as embraced in the bill. With your permission, I shall now introduce Doctor Duncan.

STATEMENT OF DR. C. S. DUNCAN, OFFICE OF THE GENERAL COUNSEL OF THE ASSOCIATION OF RAILWAY EXECUTIVES, WASHINGTON, D. C.

The CHAIRMAN. Will you please state your name and whom you represent?

Doctor DUNCAN. I am an economist in the employ of the Association of Railway Executives and I am attached to the office of the general counsel here in Washington.

The CHAIRMAN. You may proceed, Doctor.

Doctor DUNCAN. If I might request it, Mr. Chairman, if it is agreeable to you and to the committee, may I proceed with the general statement I have to make and then I shall be very glad to submit myself to any cross-examination.

The CHAIRMAN. We shall try to respect your wishes in that regard.

Doctor DUNCAN. As Mr. Thom has explained to you, consolidations are provided for in the transportation act, in section 5, which is certainly an indorsement of the principle of railroad consolidation, as well as a declaration of policy to achieve such consolidation. I should further like to point out to you that the President in his message to Congress, December, 1923, said with respect to consolidation:

> The law for consolidations is not sufficiently effective to be expeditious. Additional legislation is needed, giving authority for voluntary consolidations, both regional and route, and providing Government machinery to aid and stimulate such action, always subject to the approval of the Interstate Commerce Commission.

Again in a message from the President to Congress, at the beginning of the second session, Sixty-eighth Congress, he said:

> The consolidations need to be carried out with due regard to public interest and to the rights and established life of various communities in our country. It does not seem to me necessary that we endeavor to ancicipate any final plan or adhere to the artificial and unchangeable project which shall stipulate a fixed number of systems, but rather we ought to approach the porblem with such a latitude of action that it can be worked out step by step in accordance with a comperhensive consideration of public interest. Whether the number of ultimate systems shall be more or less seems to me can only be determined by time and actual experience in the development of such consolidations.
>
> Those portions of the present law contemplating consolidations are not sufficiently effective in producing expeditious action and need amplification of the authority of the Interstate Commerce Commission, particularly in affording a period for voluntary proposals to the commission and in supplying Government pressure to secure action after the expiration of such a period.

Further, in his message to Congress at the beginning of the first session of the Sixty-ninth Congress, 1925, the President said:

> I recommend that the Congress authorize such consolidations under the supervision of the Interstate Commerce Commission, with power to approve or disapprove, when proposed parts are excluded or new parts added.

In view of the action by Congress and in view of the repeated messages by the President to Congress, it may be assumed that a policy of consolidation, as applying to the railroads of the country, has been adopted. In the testimony which I shall give, I am assuming that such is the policy of Congress.

On this assumption, that there is an established policy of consolidation, it is my purpose to give brief consideration to certain economic aspects of the consolidation question which may serve as the general background for more specific and detailed discussion by other witnesses on the legal and financial phases of the subject.

I had thought, Mr. Chairman, I would just briefly touch upon what consolidation is, as I think that the word is used probably with different significance by different people.

Consolidation, as popularly understood, is a broad, loosely used term, which includes all methods of bringing the carriers together in some form of centralized control. These methods may involve (1) stock control, (2) control through lease, (3) control by direct ownership.

As contemplated by the transportation act, 1920, and the Parker bill, which is now before the committee for consideration, the ultimate goal of legislative action is "the consolidation of some carriers into a single system for ownership and operation" (sec. 5, sub. 2) and all railroads of the country "into a limited number of systems." In other words, this is to be the consolidation of the properties of two or more carriers "into one corporation for the ownership, management, and operation" of these properties. Or, as stated in the Parker bill, it is—

> to authorize and encourage unification * * * of the property of the carriers into a number of strong, efficient and well-balanced systems * * * so that the properties of the carriers in each system shall ultimately be managed and operated and owned or controlled by a single corporation.

It is clear that the legislative goal is a limited number of railroad systems, consolidated, merged, or unified so that each system may be managed, operated, and owned or controlled by a single corporation. The report made to the Interstate Commerce Commission under

paragraphs 4 and 5 of section 5 of the transportation act, usually referred to as "the plan or map," contemplated 21 systems, of which 3 included more than 20,000 miles of road operated—with 22,889 miles as the longest—4 between 12,000 and 20,000 miles, 4 between 10,000 and 12,000 miles, the rest ranging from 764 miles to 9,384 miles.

Mr. NEWTON. Will you repeat those figures, please?

Doctor DUNCAN. The largest number of miles of road operated in any system contained in the plan or map was 22,889.

Mr. THOM. I think you had better explain there that the plan or map you refer to was a plan or map that was made by Professor Ripley, of Harvard University, at the request of the Interstate Commerce Commission, Doctor.

Doctor DUNCAN. Yes. The Interstate Commerce Commission, in undertaking to fulfill the injunction under paragraph 4, I think, of section 5, asked Prof. W. Z. Ripley, of Harvard University, to examine the subject of consolidation and propose a plan of consolidation covering the entire country. The report to which I have referred here is the report made by Professor Ripley to the commission in 1921.

Mr. BURTNESS. Did the commission make that its own report?

Doctor DUNCAN. I am going to speak of that in just a moment. The commission slightly modified the report made by Professor Ripley and published under Docket No. 12964, entitled, "Consolidation of Railroads," what is called a tentative plan of the commission. There are certain minor changes that they made in the original report or plan as presented by its expert.

The CHAIRMAN. What document was that?

Doctor DUNCAN. The number was 12964.

Mr. SHALLENBERGER. The plan was Ripley's plan rather than that of the commission?

Doctor DUNCAN. It is substantially Ripley's plan, modified by the commission in certain respects.

Mr. THOM. As to that, there has been no final action, but there have been hearings.

Doctor DUNCAN. Yes. I was going to speak of that. Of course, under the law, hearings were required before the commission on any consolidation plan that it had to offer, and hearings were held for more than two years upon that plan.

Mr. BURTNESS. Just for my own understanding at this time: The commission then did proceed under those provisions of subdivision 5 of section 5 to hold hearings and as to the plan that they published, was that done pursuant to this language in the act that after the hearings are at an end, the commission shall adopt a plan for such consolidation and publish the same? Was it an adoption in the sense of that language or not?

Doctor DUNCAN. No, sir; that is not correct. The tentative plan of the commission was the basis of the hearings that were held and no final plan and no report resulting from the hearings has yet been made by the commission.

As to this plan presented by the expert of the commission, four of the systems contained between 12,000 and 20,000 miles; four between 10,000 and 12,000 miles; the rest ranging from 764 miles to 9,384 miles.

As modified by the Interstate Commerce Commission in its tentative plan, the number was reduced to 19 proposed systems.

The extreme of consolidation that has been suggested is to make all of the railroads of the country one single, unified system. From time to time this extreme measure has been advocated by certain individuals, but the unanswerable objections to the proposal have prevented the idea from making any material progress.

It will be noted that the expert for the commission, and the commission itself, have believed that the unification of the main railroads of the country into a "limited number," as provided for in the transportation act, would be carried out in spirit by from 19 to 21 consolidated systems.

It is also important to note that all attempts to consolidate the carriers of the country into a limited number of systems have recognized certain fundamental economic situations in the country, as relating to areas of production and areas of consumption, the natural flow of traffic to and from these areas, to such a degree that the proposals are for consolidated systems to be limited by geographical divisions or by rate-making districts and that they are to be harmonious with existing channels of trade.

For example, it is well known that the flow of traffic in the northern part of the United States in east and west, that there is a current of traffic flowing down the Atlantic seaboard north and south, that in the Southeast the movement is generally in the shape of a U around the foot of the Allegheny Mountains, and that in the great southwestern region the flow is northeast and southwest. So far as I know, all proposals have recognized this situation.

It is my purpose now to show as briefly as possible the economic factors which have formed the ideas for consolidation limited as described above. The particular point to be kept in mind is the fact that the railroad systems as they now exist have themselves developed to meet the economic demands which have been generally indicated.

PURPOSE OF CONSOLIDATION

What is the aim and purpose of railroad consolidation as contemplated by legislative action in 1920 and as contemplated by the proposed bill?

Senator Cummins, in the Senate report from the Committee on Interstate Commerce on November 10, 1919, said:

> The writer of this report is firmly convinced that when the Government assumed the operation of the railways they were, taken as a whole, earning all they should be permitted to earn; but in the inevitable distribution of these earnings among the various railway companies the railways which carried 30 per cent of the traffic were earning so little that they could not by any economy of good management sustain themselves. Nevertheless it is unthinkable that these highways of commerce shall be abandoned, and some system must be devised not only for their continuance, but for their betterment and growth. Government ownership would solve the problem, but it is the judgment of the committee that Government operation is attended with so many disadvantages—notably in the increased cost of operation—that this plan must be discarded. There is but one other solution. It is consolidation, and here two policies at once present themsevles. The first, complete consolidation into one ownership; second, consolidation into comparatively few competitive systems. The first has some advantages over the second, but it has some disadvantages, and the disadvantages outweight, in the opinion of the committee, the advantages.

> The superior efficiency of several systems need not be enumerated at length, but there is one consideration to which attention should be called: Competition, not in rates or charges but in service, will do more to strengthen and make public regulation successful than any other element which can be introduced into the business of transportation. Honorable rivalry among men is the most powerful stimulus known to human effort. For this reason largely the committee, recognizing the necessity for consolidation, determined in favor of the gradual unification of the railways into not less than 20 nor more than 35 systems; not regional or zone systems but systems that will preserve substantially existing channels of commerce and full competition in service. In the grouping of the railways into these systems another vital rule is to be observed, namely, that they are to be so divided that the operating incomes of the several consolidated companies will bear substantially the same relation to the value of their respective properties held for and used in transportation.

Again, in a speech to the Senate on November 4, 1919, Senator Cummins said:

> We are agreed that we can not raise the rates upon the weaker properties to that they will be self-sustaining, because that would give to the stronger properties, which move 70 per cent of the business of the United States, an income so excessive that it would not be tolerated for a single month. Therefore that solution must be discarded. We can not give to the stronger properties the rates which would return for them no more than a fair interest upon the value of their property and that alone, because that means death to the weaker properties which must compete with them in traffic, and, of course, upon the same terms, so far as rates are concerned. So we must inquire further. We must find some other way in which we can maintain the general transportation system of the United States and promote the welfare of our people. We must find some other way in which to do it. How can we accomplish it?
>
> You may inquire as you will, you may study it as deeply as you may, but you will finally reach the conclusion that it can only be done through consolidation.

He said further:

> The great general public has the right to ask of its Government such a system of regulation as will give to each community the transportation upon which its life, its growth, its development depends.

As appears in paragraph 4, section 5, of the transportation act, 1920, it is enjoined that—

> In the division of such railways into such systems under such plan, competition shall be preserved as fully as possible and wherever practicable the existing routes and channels of trade and commerce shall be maintained. Subject to the foregoing requirements, the several systems shall be so arranged that the cost of transportation, as between competitive systems and as related to the values of the properties through which the service is rendered, shall be the same so far as practicable, so that these systems can employ uniform rates in the movement of competitive traffic and under efficient management earn substantially the same rate of return upon the value of their respective railway properties.

As provided for in the Parker bill, which is before this committee for consideration:

> SEC. 202. It is hereby declared to be the policy of Congress, in order that an adequate and efficient transportation service may be maintained in the United States and necessary weak and short lines be preserved, to authorize and encourage the unification * * * of the properties of the carriers into a number of strong and efficient and well-balanced systems which will, as far as practicable, maintain the existing routes and channels of trade and commerce and preserve, as between themselves, the advantages of effective competition in service, so that the properties of the carriers in each system shall ultimately be managed and operated and owned or controlled by a single corporation, economy be promoted, unnecessary duplications and wasteful competition eliminated, better service afforded, and the traffic moved at the lowest rates compatible with the maintenance of adequate and efficient transportation service.

When Senator Cummins presented his bill for the consideration of the Senate Committee on Interstate Commerce during the present session of Congress, he said in his opening remarks:

> I think there is in the public mind some misapprehension with regard to the chief purposes of this bill; that is to say, S. 1870. It is a bill to facilitate further the consolidation of the railways of the United States into comparatively few systems. Many people seem to assume that the chief object to be accomplished by the consolidation proposed is to lessen the cost of maintenance and operation. While I believe there would be very substantial economies effected through proper consolidation, economies which have been estimated all the way from $100,000,000 per year to $300,000,000 per year, yet these economies, desirable of course as they are, do not furnish the impelling reasons for consolidation. * * *
>
> It is my opinion, Mr. Chairman, formed after years of intensive study, that our railroads can not as a whole be operated and maintained under private ownership upon rates as low as ought to prevail without consolidation. * * *
>
> These railway transportation facilities are owned and operated by more than 900 independent railway corporations.
>
> More than 80 per cent of the traffic which moves in the United States is what we term competive traffic. * * * It can easily be demonstrated by facts that will not be disputed by anybody that taking an average of three years past—and with a single exception these have been the best years the railroads have ever known from the point of volume of traffic—companies owning more than 60,000 miles of main-track railway have earned from less than nothing to less than 3 per cent upon the lowest estimate of the value of the property that could be attached to it under any rule of valuation. * * *
>
> The object of consolidation, therefore, is to keep these roads running without giving to the more fortunate railway properties excessive incomes. And I desire to remark here that I am not primarily interested in the capital which has been invested in these unprosperous railroads. I would not willingly do any injustice to that capital, but no matter what happens to the capital, the railroads must be kept in operation, and not only in operation but in efficient operation.

It will be apparent from an examination of the comprehensive hearings held before the committees in both Houses of Congress prior to the passage of the transportation act, as well as in the testimony given before the Senate Interstate Commerce Committee on various bills looking toward consolidation introduced by Senator Cummins, that the chief objects sought by consolidation of the railroads into a limited number of systems are as follows. I have endeavored to summarize these for clearness.

1. The rehabilitation of the railroads' credit, in order that transportation facilities may be kept in step with the increasing demands for transportation service.
2. That transportation facilities, adequate and efficient in character, shall be maintained for the service of all communities throughout the country.
3. That the so-called "weak-line" problem should be solved and disappear.
4. That rate-making for the railroads as a whole would thus be simplified in that rates would not need to be raised so as to give strong carriers larger revenues than they need in order that weaker lines may live, but rates may be placed upon a sound economic basis.
5. That the resulting large consolidated systems would not be made so as to disrupt or interfere with the natural flow of traffic.
6. That competition as between the enlarged and strong systems should be maintained and "honorable rivalry among men" should be maintained as "the most powerful stimulus known to human effort."

7. That every consolidation shall require the sanction of the Interstate Commerce Commission.

These, in brief, constitute the avowed purposes sought for by legislation active leading to consolidation of the railroads.

Since the passage of the transportation act, 1920, certain changes have come both in economic conditions and in ideas. Senator Cummins, for example, has somewhat changed the emphasis of his argument from economies of operation to preserving transportation facilities. To be sure, he desires that all possible economies shall be realized, but I know of no reliable figures, estimates, or authority as to what the possible savings from economy of operation would be.

In fact, in the hearing on the consolidation bill, S. 2224, introduced by Senator Cummins during the Sixty-eighth Congress, second session, the author of the bill said:

> I would like to say at this point that, as the author of the bill, a saving in the cost of operation was a negligible factor in my mind. There is a great difference of opinion with regard to the saving that could be effected. Some experts say we could save from three to five hundred million dollars a year; others say the saving would be very small. That was not my purpose in introducing the bill and seeking legislation. The whole purpose was to keep all the railroads of this country running at the lowest possible rates of transportation. It was introduced because I believe if there be not a consolidation there are just two alternatives—a large part of the mileage of the railroads of the United States must be abandoned, or the Government must take charge of the transportation system and operate it at the public cost. (Hearings on S. 2224, pt. 2, 73, 74.)

Gradually attention has centered more and more upon the fundamental question, which is to find a means of preserving and improving for each community its transportation facilities, and consolidation has been brought forward as the most feasible method of accomplishing this purpose.

Now, it seems to me that all of these aims and purposes can finally be resolved into two simple propositions. The first proposition is that the primary and essential problem involved in the question of consolidation is finance. The second proposition is that no statutory bars should be permitted to prevent the railroads from seeking, through the consolidation of their properties under proper regulation and supervision, that size and type of organization which will enable them to serve the public best.

Now, Mr. Chairman, I should like, for the purpose of giving some background to the statements that will be made, to review very briefly what consolidation has done for the railroads in the past.

This matter of combining, or consolidating, or merging different lines of railroads is no new thing. In fact, this process has been going on from the earliest stages of railroad construction. The very nature of railroad operation forced upon the industry the absolute necessity for extended operations. The railroad is constructed for the purpose of tapping sources of traffic and for conveying that traffic to some logical destination. As the need for a longer haul arose, the need for longer mileage under a single operation arose.

The United States census of 1900, in describing the state of industry in this country at the middle of the nineteenth century said:

> It seems probable that until about the year 1850 the bulk of general manufacturing done in the United States was carried on in the shop and the household, by the labor of the family or individual proprietors, with apprentice assistants, as contrasted with the present system of factory labor, compensated by wages and assisted by power.

Under these conditions the business of the country was a local business and the demand for transportation was a local demand. There was no need for extensive railroad systems, if such had been possible.

In the period from 1850 to 1860, however, railroads were built into competitive territory and local rivalry increased. The managers of these railroads looked upon them as a private enterprise, to be carried on as a private manufacturing business or merchandising business is carried on. It was considered the duty of railroad management to guard its traffic as a manufacturer or merchant would guard his trade.

In this early period of railroad development when it became necessary for traffic to be carried over lines of two or more railroads, the carriage by each road was a separate act of transportation. An individual bill of lading was issued by each road. It was not thought possible at that time to allow freight cars to be moved from the track of one railroad over the tracks of another. "For a railroad company to permit its cars to go away from its own track would have seemed the equivalent of making the other company a present of them."

It is well known, of course, that in this period definite steps were taken by railroad companies to prevent the transfer of traffic, as, for instance, by the Erie Railroad, which built its track on a 6-foot gauge, while other carriers had adopted the standard gauge, due probably to the fact that the first steam engines brought over from England had trucks of that width.

No doubt this local attitude of mind would have changed through necessity with widening markets and increased length of haul, in order to get raw materials and foodstuffs to the growing trade centers. The broader idea was hastened, however, by the necessities of the Civil War. The Government at that time was compelled in the forwarding of troops from one point to another to carry them with the least possible delay and as much as possible without change of cars. The result was that the passenger coaches necessarily were transferred from the rails of one carrier to those of another. Another factor was the extension of mail service, where time was of the essence and the delays due to unnecessary changes had to be avoided. Thus, the possibilities of through car movement aroused the people to a keener appreciation of the advantage there would be in the movement of passengers and freight with the fewest possible transfers. The strength of the prejudice that had to be overcome, however, can be illustrated by the fact that the Erie Railroad was prohibited under penalty of the forfeiture of its charter from making connections with another road. Other States and even municipalities placed similar restrictions upon other railroads.

Nevertheless, consolidation was taking place even during this decade preceding the Civil War. In the years from 1853 to 1858 the foundation of the great New York Central system was laid. This movement had been on foot for some time and it is declared that each section of the road from Albany to Buffalo was so constructed as to have it for the use of other roads in a continuous line. In order, however, to secure a continuous line from Buffalo to Albany it was necessary to consolidate 16 different railroad organizations. It is interesting to note that from the records of this early consolidation of 16 small properties, there were raised practically all of

the problems which concern, on a larger scale, the railroads in their attempts to consolidate to-day. As recorded in a recent book entitled "The Beginnings of the New York Central Railroad," by F. W. Stevens, page 378:

> The great problem at the Syracuse meeting (where consolidation was agreed upon) was to agree upon and use some basis of judgment which would give to the stockholders of each company a just and fair proportion of the securities to be issued by the new company for the property it received from all. * * * This is a dilemma which confronts every voluntary consolidation and also every involuntary one, unless legislative power is invoked to compel a stockholder to surrender his stock for less than its value and become a member of a new corporation against his will.

While the idea of public regulation, as we now understand it, was still unformed in the minds of men at this early period, and the directors of the various constituent companies were permitted to act without regulation and supervision on common-sense business principles, it may be noted, first, that the consolidation which took place was satisfactory to all parties directly concerned; second, that the public was undoubtedly greatly benefited by the superior service which the consolidated roads afforded them; third, that the initiative born of economic necessity came from the carriers; and, fourth, that the whole proceeding was carried on on a business basis, as is true of any other private enterprise.

As a result of the Civil War, public opinion became overwhelmingly in favor of the railroads' carrying through traffic, with through bills of lading and through passenger tickets, even though the commodities and passengers had to pass over the tracks of two or more roads. It may be recalled that until after the Civil War there was only one road with a length of more than 1,000 miles. In the decade preceding the war, the Pennsylvania system first surpassed 500 miles in length.

> It is stated that, for instance, a journey from New York to the Mississippi in the fifties involved not less than seven bodily transfers from one car to another.

These are the facts and conditions which led Congress to enact, in 1866, a law which stipulated that—

> every railroad company of the United States * * * is hereby authorized to carry * * * all passengers, * * * freight and property on their way from any State to another State * * * and to connect with the roads of other States, so as to form continuous lines for the transportation of the same to the place of destination.

This is the period in which railroads were attached end to end to make continuous operation over an extended territory possible. While delayed by the depression of 1873 and the following years, the movement for tying railroad lines together end for end and seeking lateral lines as feeders progressed with rapidity up to 1890.

In the annual statistical report of the Interstate Commerce Commission during its second year of operation, 1889, attention is called to the striking movement then going on toward "organization of property for operation." The writer remarks upon the changes then taking place by consolidation, merger, and reorganization. He points out that during the year 1889, 25 companies disappeared from his records by consolidation, 41 by merger, and 25 by reorganization. His records show that for that year there were 33 operating corporations with an operated mileage of more than 1,000 miles and with an

aggregate mileage of 76,963 miles, or 49.09 per cent of the total mileage.

The same record shows for the fiscal year ending June 30, 1901, 49 operating corporations, with a mileage of over 1,000 miles, aggregating 127,448 miles, or 64.71 per cent of the total mileage then existing.

For the year 1910, the same record shows 54 operating corporations, with a mileage of over 1,000, aggregating 167,821 miles, or 67.13 per cent of the total mileage then existing.

It is clear from this record that consolidation is an old problem with the railroads, and that just as the construction of new lines and the extension of the railroad net has taken place to meet the change in demand for transportation service, so the consolidation, or combination, or merger of individual roads into larger systems has taken place in response to economic demands.

It may be further pointed out that in the early period of consolidation, when the great systems which exist to-day were built up out of individual properties, the motive was, first, the extension of road under a single operating head for the carrying of through traffic between great trade centers, such as New York, Philadelphia, Baltimore, Chicago, St. Louis, and Cincinnati, continuously over the lines of one company; second, to secure increased ability to handle the increasing traffic which developed from a rapidly growing agricultural and manufacturing industry; third, to secure uniform, standard equipment and practice in the continuous handling of such traffic; and fourth, to avoid the delays and expense involved in frequent transfers, that is, the advantage of large scale transportation service.

With the rise of great systems, competition and rivalry naturally increased and there came the period of freight rate wars, with resulting legislative action to establish the Interstate Commerce Commission and to extend the regulation by States and the Federal Government over railroad operation. During the depression of the nineties railroad consolidation was checked, but with the return of prosperity at the end of that decade a new phase and a new impetus arose.

We all point to a brief period, from 1899 to 1903, as the one in which the idea of combination of business, the idea of big business, of mass production, of standardized production, actuated the minds of business leaders, an idea that spread over this country like wildfire and brought into being the great trust problem. With increased prosperity, with easy money and strong financial institutions, the movement for railraod combination and consolidation was renewed. The movement at this time was primarily for a combination of competing systems and much was being said about the economics to be derived from large railroad operations to correspond with economies of large industrial operations. It will be remembered that rate agreements, pools, and traffic associations, for the purpose of preventing cut-throat competition and mutual destruction by competing railroads had been declared illegal in the Trans-Missouri Freight Association case of 1897 and the Central Traffic Association case of 1898, wherein the Supreme Court held that the Sherman Act applied to the railroads and that the provisions of that act rendered an agreement between competing railroads to maintain rates an illegal agreement.

In 1902 the Government brought suit in the case of the Northern Securities Co., which was held by the Supreme Court to be illegal in 1904.

The consolidations which have taken place since this period have been confined largely to noncompeting roads or to stock control or to feeder lines, for the purpose of "friendly relationship" and the facilitating of interchange of traffic such as was permitted under the antitrust laws and the supervision of the commission. This has been called the period of "high strategy" in railroad management. It will also be remembered that this was the period of interlocking directors, to such an extent that a public investigation took place and the practice was condemned as not being in the public interest. I refer to section 10 of the Clayton Act.

Legislative action and public opinion, therefore, for 30 years prior to the transportation act had been based upon the economic theory that public interest was best served through enforced competition, both in rates and in service, between the rail carriers and with the Interstate Commerce Commission enjoined to keep a vigilant eye on the general activities of railroad managers and to prevent, by force of law, discriminations, rebates, and unjust and unreasonable rates. Nevertheless, during this 30-year period the fundamental economic characteristics of railroad operation became better understood by the public and by the representatives of the public in Congress, so that they reached the conclusion that competition in freight rates, even under the strictest supervision, was not wise or in the public interest, for the reason that railroads were compelled by economic laws to charge the same rate when in competition.

The realization of this fact by the public and by Congress has doubtless been an important element in changing the attitude of the public and Congress toward railroad consolidations, and this idea has been an important factor in leading the legislative minds in the transportation act to relieve the railroads from the provisions of the Sherman antitrust act and the Clayton Act and to permit them, under proper supervision, to consolidate in the public interest.

Through this devious course of economic history we have arrived at the situation where the Federal law indorses the principles of consolidation between carriers, with proper safeguards.

There are about 1,959 operating lessor and industrial railroad companies in the country. About 500 of these are either industrial, narrow-gauge, or small railroads that have only local significance and are not of any fundamental importance in the general national transportation system. There are, therefore, in practical operation between 1,400 and 1,500 remaining companies in which are 175 class I railroads—that is, those having operating revenues in excess of $1,000,000 per year—and 13 important switching and terminal companies. These Class I roads and terminal companies, making in all 188, operate about 90 per cent of the mileage, originate about 91 per cent of the freight traffic, probably a higher percentage of the passenger, mail, and express traffic, and, due to the length of haul receive about 96 per cent of the total operating railway revenues of the country.

There are in the country to-day large, strong, efficient systems which no one yet has proposed to tear asunder or undertaken to attach to other roads. These systems, as they stand to-day, are the

result of a slow, progressive economic growth. As has been noted before, the New York Central began with the consolidation of 16 companies to make a continuous line from Albany to Buffalo, and in 1914 had absorbed 186 companies, some of which themselves were composites. The Pennsylvania system is made up of more than 600 original railroad companies, which have been reduced by consolidation, merger, absorption, purchase, or even foreclosure, into 70 transportation companies.

Mr. WYANT. Of how many companies is the Southern Railway made up?

Doctor DUNCAN. The Southern Railway system was constructed by the incorporation of 40 or more original railroad systems.

I am not absolutely sure in my mind that these companies generally referred to as 40 were not the result of consolidation in themselves.

Mr. SHALLENBERGER. How many of these companies, if you know, were formed for the purpose of constructing railroads and were then absorbed by the general corporation, merely as an added expediency?

Doctor DUNCAN. In the construction of railroads, in the West particularly, they organized construction companies to build the railroad. They would pass over the railroad after it was built. Those are not included in this, however.

Mr. SHALLENBERGER. You do not have that sort of consolidation in there?

Doctor DUNCAN. I do not have any of that sort.

I suppose it could be said that practically every large system in existence is the result of consolidation.

If the record which has brought us to the present situation holds a moral for us to-day, it is that there is constantly upon the railroad systems of the country an economic pressure which urges them to seek that size and type of organization which will bring them to the highest point of efficient operation, enable them to tap the most diversified and fruitful sources of traffic and to serve the communities through which they run and the trade centers at their termini as satisfactorily as possible. Experience has also demonstrated that as the railroad managements accomplish this purpose the public is more adequately and efficiently served.

I would like, if I may, on the basis of what I have said, to analyze what I understand to be the pending problem now before the committee.

As I see it, consolidation is only one phase of the general problem, which is, "to give to each community the transportation upon which its life, its growth, its development depends," at just and reasonable rates and on the basis of a fair return on the value of transportation property. This is at least one of the purposes expressed in the transportation act, 1920, and not to be disturbed. Whatever method is used to secure this desired result, business relationships are not to be destroyed and business generally is not to be thrown in chaos. The rights of the public and the rights of the railroad owners are not to be disregarded.

What, then, are the elements in the pending consolidation question? Among these elements are the following:

1. Some railroad systems, while meeting adequately all the tests of proper consolidation, are not yet fully merged into a single whole and it may be desired by these systems that opportunity be given for them fully to accomplish this consolidation. In this class will appear such systems as the Pennsylvania, New York Central, and others.

2. Some roads may see positive advantages to themselves, to other roads, and to public service by a unification of operation. This was the position taken by those who sought the recent Nickel Plate unification.

3. There are carriers who probably feel that all the advantages possible may be secured under paragraph (2) of section 5 in the law as it now stands. While this is a step toward final consolidation, it does not go all the way. This provision of the law has been used by the Southern Pacific, the Frisco, and others.

4. There are other carriers who doubtless feel that their properties as now constituted and as now operated adequately meet all the tests to be applied to common carriers. They do not, therefore, desire to be absorbed and thus to lose their identity, and they probably are not able to see any advantage to the public generally, to the communities which they serve, or to themselves, in the carrying out of a plan to consolidate all the roads of the country into a few large systems.

5. There are lines that appear to see their only salvation is being absorbed by stronger lines. In their view, consolidation means for them life and continued existence and no consolidation means either continued loss or death. Such roads doubtless hold that their continued existence as a part of a strong and efficient system would maintain transportation facilities for the communities dependent upon them, would raise the quality of such service, and would be of advantage to the owners of the properties.

6. On the side of government, both Federal and State, there exists an inconsistency or conflict. The laws in certain States now stand in the way of further progress in consolidation. The Federal law, on the other hand, not only permits, under certain conditions, the consolidation of railroad properties, but encourages such consolidation and affords in the recapture clause an incentive or impetus to the movement.

7. The Federal law, however, as it now stands, sets up an artificial and necessarily impractical provision for the consolidation of the carriers. I refer to the plan or map which is provided for in section 5, paragraphs (4) and (5) of the transportation act. So long as the railroads are a private enterprise, consolidations will be the result of bargaining on a business basis and all parties at interest will have to be satisfied before the consolidation can be achieved, and the rights of all will have to be fully protected.

Since the railroads are a private enterprise, even though devoted to public service and under public supervision, their relations to each other must necessarily be on a business basis. It follows, therefore, in the matter of consolidation that the terms under which consolidation takes place must be commercially justifiable. There is absolutely no other means by which the railroads, while remaining private enterprises, can be brought together on an equitable basis and the rights of all interested parties safeguarded.

In the report conveying the plan to the commission, made by the railroad expert selected for that purpose, it is stated:

> The putting together or dismemberment of individual properties may bring about results, which are quite unpredictable, by the arbitrary means of statistical investigation. Elaborate calculations by experts concerning the development of business under the new conditions are really necessary in order to afford a reliable forecast. Not published statistics but rather an intimate acquaintance with local traffic conditions afford the only entirely reliable data.

It is further stated in the report that the aggregate mileage included in the proposed consolidation was 220,000 miles, and adds:

> There thus remains the not inconsiderable aggregate of 39,000 miles of line, consisting of the so-called short lines, the remaining Class I roads and those within Classes II and III * * *.

That is to say, the plan presented by Professor Ripley to the commission, and the tentative plan upon which hearings were held by the commission, did not account for or include the mileage to which I now refer.

> No attempt has been made to trace the natural relationships of these minor properties and probably it is not necessary at this time. But the fact of their existence and, in many cases, their grave necessities, may not be ignored. A comprehensive plan of railroad consolidations would include their allocation in due course; but the data are not at present available.

The Interstate Commerce Commission itself, after reviewing this report of the expert which was presented to it in 1921, and after holding extensive hearings covering more than two years have not yet reached any conclusion upon a comprehensive plan for consolidation. As the commission has studied further into the subject, the complications and ramifications have become so great that it is asking now to be relieved of the responsibility and burden of publishing such a plan.

In its thirty-ninth annual report, of December 1, 1925, page 72, the commission recommends:

> That paragraphs (2) to (6), inclusive, of section 5 of the interstate commerce act be amended: (*a*) By omitting therefrom the existing requirement that we adopt and publish a complete plan of consolidation.

In view of this situation, legislative action is now called for to modify the transportation act in such a manner as to eliminate the requirement for a plan to be published by the Interstate Commerce Commission. Doubtless much good will come from the comprehensive study so far made in its endeavor to work out a plan. New information of a valuable nature has been assembled in the hearings before the commission as to origin of traffic and transfers of traffic between carriers, and also as to the density of traffic by operating divisions. These facts are new and are useful alike to the carriers and to the commission in many ways, because we are realizing more and more clearly the close connection between economic geography and the railway problem. There is also value in having a broad national survey of the railroad situation. Minds have progressed from a narrow local point of view to a country-wide point of view in transportation matters. It is within the realm of possibility that a system transcending anything yet suggested in the various plans would be most effective. The future alone can afford us ground for judgment.

The requirement for a plan, rigid, theoretical, and unworkable in practice is, therefore, not only not necessary but is even an obstacle and a detriment to accomplishing the very purpose sought.

The further requirement in the present law that the railroads be consolidated into a "limited" number of systems, ought to be liberalized. What the far distant future holds, no one can now say. We are not yet a matured country. Our railroad net is not equally complete in all parts of the country. But the consolidating of all the railroads now in the country into 19 or 21 systems according to a manufactured plan in the immediate future is not a possibility without doing violence to good sense, wise judgment, and economic justice in many cases, and without scrambling roads which later will require unscrambling. Natural, businesslike, evolutionary progress is to be desired in this important matter. Safeguard the public, and I am convinced it is now thoroughly safeguarded; remove legal obstacles that now stand in the way of progress in consolidation on conservative business principles; create the required legal machinery for carrying justifiable consolidation proposals to a conclusion; remove compulsion; set standard tests of proper consolidation, if possible now, and see that they are lived up to. Then consolidations in general will take care of themselves. Personally, I am quite convinced that, if that could be achieved, consolidation would move much more rapidly than people generally think.

There remain, however, the questions of finance, of sound credit and adequate returns, and of weak lines.

General railroad credit can be restored without consolidation. In fact, consolidation in itself will not restore general railroad credit. The solution of this problem is now within the power of the Interstate Commerce Commission.

But what of the weak lines? If I may be permitted, I would like to comment upon that very important question at this time.

If the progress of this analysis up to this point has been correct, the problem of consolidation very largely hinges upon, first, the best method of securing and maintaining adequate and efficient transportation service for all parts of the country, and, second, the solution, necessary for the realization of the conditions stated above, of the so-called weak-roads problem. Let us briefly examine this second question.

What is a weak road? It is obvious that the test of a weak railroad is neither size nor length nor location. The real test is the relation of net return upon investment. A railroad is weak because it is lacking in earnings and, therefore, in credit, and therefore in proper equipment and ability to afford adequate and efficient service. Weak roads do not correspond to the classes established by the Interstate Commerce Commission, known as Class I roads, Class II roads, and Class III roads. Weak roads are not confined to the group known as short lines.

It will be clear also that even this test of weakness will not necessarily classify permanently any given road in the weak group. Let me briefly illustrate. In 1922, Senator Cummins wrote for the Des Moines Register a number of articles, in which he discussed various matters relating to railroads in a most able and interesting manner. These articles have been reprinted as a Government document. In one of them he said:

> I am not troubled about roads like the Pennsylvania and the New York Central and the Burlington, or what not. They can take care of themselves. * * * What are we going to do about roads like these?

He then gave a list of 46 roads that showed deficits or small net railway operating revenues and he urged that some plan must be adopted which would bring relief to such roads, and stated that, in his judgment, the only possible plan short of Government ownership was consolidation.

The records of these 46 roads are now available for a later date, and we are able to see what has happened to them and whether or not one may conclude that the weak roads of any given year will be the permanent weak roads in the country.

I should like to make certain comments on these records. The total mileage represented by these so-called weak roads for 1922 was given by Senator Cummins as 42,509 miles. Certain minor changes since that date have resulted in the average miles operated in 1925 of 42,811 miles.

An inspection of this record will show immediately the very material change that has taken place in revenues, in operating ratio, and in net operating railway income with respect to these 46 carriers. I have calculated, for instance, the aggregate net railway operating income and the aggregate deficits for each of these years. This calculation shows that the total net railway operating income for the group was $39,325,258 and the total deficits $7,214,562 for the year 1922. This leaves for the group, by subtracting the deficits from the income, a total net railway operating income of $32,110,696. In 1922, 18 of these 46 carriers showed a deficit.

For the year 1923 the aggregate net railway operating income was $65,868,649 and the total deficits $2,011,322, as contrasted with $32,110,696 the preceding year.

Mr. THOM. You mean $39,000,000. You are contrasting the figure after the deduction is made.

Doctor DUNCAN. Yes. I should have said, $39,325,258. The total deficits were $2,011,322, as compared with $7,214,562 for the preceding year. These figures show an increase in aggregate net railway operating income for the group of more than $26,500,000 and a decrease in deficits of more than $5,000,000. In 1923 only nine of the roads showed a deficit as compared with 18 in the preceding year. When the deficits are subtracted from the net railway operating income, there is left an aggregate of $63,857,327.

The same figures for 1924 show an aggregate net railway operating income of $76,598,194 and the aggregate deficits amounted to $2,152,501. In this year there were 11 roads which showed a deficit. When the deficits are subtracted from the net railway operating income, the remainder is $74,545,693.

For 1925 the aggregate net railway operating income was $84,080,405 and the total deficits were $1,251,518. The number of roads with deficits was seven. When the deficits are subtracted from net railway operating income, the remainder is $82,828,387.

Mr. DENISON. Is that the same group Senator Cummins was talking about?

Doctor DUNCAN. Exactly the same group carried through.

The above figures give a clear indication of the tremendous changes that have taken place in this brief period in the group of roads classified at that time as weak lines.

Illustrations of these changes may be interesting. The Buffalo, Rochester & Pittsburgh, for example, showed a return in 1922 on property investment of 0.79 per cent; in 1923, 4.10 per cent; in 1924, 3.63 per cent; and in 1925, 3.64 per cent.

Mr. WYANT. Special consideration was given to that road, due to the fact that it suffered from the paralysis of the coal industry, it being a coal-carrying road.

Doctor DUNCAN. That is the very point I want to illustrate. Those conditions affect the problem of weak roads.

With the exception of 1922, the net railway operating income was substantially above the fixed or interest charges on this road.

The New York, Ontario & Western in 1922 had a return on property investment of 0.35 per cent; in 1923, 1.04 per cent; in 1924, 1.73 per cent; and in 1925, of 1.13 per cent. In 1924 this road had a balance after interest charges were paid.

The Detroit, Toledo & Ironton was classified by Senator Cummins among the weak lines.

Mr. NEWTON. That was before Ford got it, was it not?

Doctor DUNCAN. Just after. He had not begun operation.

The Detroit, Toledo & Ironton showed a deficit in 1922 of $158,984. In 1923 the return on property investment was 6.65 per cent; in 1924, 8.80 per cent; and in 1925, 12.45 per cent. In every year subsequent to the year 1922, there was a substantial surplus above interest charges.

Mr. WYANT. All material for that factory was shipped over that road?

Doctor DUNCAN. I so understand.

Mr. WYANT. Does the commission have any power to select that?

Doctor DUNCAN. I understand the general practice is that the shipper can select his own route.

The Missouri Pacific, listed as a weak line in 1922, had a return on investment of 2.13 per cent in that year; of 2.23 per cent in 1923, of 3.78 per cent in 1924, and of 4.31 per cent in 1925. This road has now passed definitely out of the weak-line class, as have others.

The Texas & New Orleans road had a deficit in 1922 and in 1923. In 1924 it had a return on property investment of 1.33 per cent and in 1925 a return of 6.36 per cent.

These examples only illustrate the changes that may take place in any group of railroads where business and traffic are liable to fluctuation. They show very clearly that no extensive group of railroads can be permanently classified from the results of any one year as weak lines.

The converse also is true. This is a broad country with greatly diversified climate and agriculture and industry. The same influences do not have the same effect in all parts of the country. The result is, therefore, that for one reason or another certain railroad lines may grow weaker and may fall into the class of weak lines. In a word, there is no permanent classification that can be made here.

It is, however, certain that even though roads increase their earnings so as to rise out of what may be called the "weak-road" class, and other roads may decrease their earnings—perhaps I should say have their earnings decreased—so as to fall into this classification, thus making the subject somewhat indefinite and uncertain, there is a problem that remains constant. That problem is to preserve and to maintain a stong, efficient, and adequate transportation service.

It may be further noted that out of these 46 roads, with a total mileage of a little more than 42,000, 11,000 miles are now controlled by other companies, and something like 31,000 miles are independent. Of course, that simply means that in cases where these properties are controlled by larger properties, the published returns are not of as much significance for that particular property as in the independent cases. Some of those roads are controlled by such companies as the Canadian National, the Erie, Southern Pacific, the Northern Pacific, Burlington, and the Atchison.

I do not desire to have it inferred that there is not a real weak-line problem to be faced. My purpose rather is to show in as impressive a manner as I am able that the weak-line problem, like all phases of consolidation is made up of specific business problems, differing in detail and demanding individual analysis and study.

I desire also to emphasize as much as I can that the other problem, namely, the strengthening of the transportation service of the country, is a pressing and important problem. Transportation is almost universally referred to as a fundamental and essential service. It seems to me that it follows, therefore, that the problem of strengthening that fundamental and essential transportation service is one which must be met.

After one has determined what a weak road is, the second step to be taken is to inquire, "What are the causes of weakness?" Let us say that the answer generally is that the primary cause is financial—the lack of adequate earning power. Back of this, however, are the contributing causes which must be isolated and analyzed. There may be, for instance, a lack of traffic, due either to lack of production in the communities served, inability to secure traffic in the competitive struggle with other carriers, or otherwise. It is possible that there may be uneconomical management. The financial structure may be the cause, such as overcapitalization. There may have been unwise construction. It is generally admitted, I believe, that a careful survey would show that certain mileage should not have been built and that certain mileage, having been built, should probably long since have been abandoned. Or it may be that the level of rates within the entire district is too low. There may have been overbuilding in a certain district. There may be steep grades or circuitous routes. A weak road may result from exhaustion of resources through the cutting out of timber or the depletion of mines, with nothing to take the place as a source of traffic. The causes are numerous, and one can not act intelligently in solving the problem raised by weak lines without an intelligent and comprehensive knowledge of these causes.

The third step, it seems to me, that should be taken is to consider how consolidation would affect these causes of weakness. Would consolidation eliminate them? Would the joining of weak lines with weak lines bring more traffic, secure better management, produce a better financial structure, eliminate steep grades, or otherwise be helpful?

It must also be considered that if consolidation, as proposed by an arbitrary plan, would not remedy the causes of weakness, then the absorption of an inherently weak line into another system would only carry dry rot into the larger structure. No artificial plan can take into account the necessary details to afford a basis for intelligent action in regard to these questions. No arbitrary legislative act will create new traffic.

A great deal is said about the weak lines and short lines becoming feeders to a larger system. Careful consideration, however, is needed to see that these new attachments are feeders and not suckers.

Mr. WYANT. What is your view of a short road in the position that it has potential freight amounting to millions of tons not yet developed, but which in the course of years will be developed, and that road would become profitable? Should that be taken care of by a stronger road? What is your position on that?

Doctor DUNCAN. My position, as I have already stated, is that if the facts are as you say, and it can be demonstrated that the potential traffic is there, then, if a larger system can be shown that fact it will not be long in taking over that system. That is all it needs. It is a business problem.

Mr. WYANT. So the question of where that short line shall be classified must be predicated upon the potentiality of freight in that district in years to come?

Doctor DUNCAN. Yes. And you can only know that as a result of careful study in each individual case.

Mr. WYANT. By practical men?

Doctor DUNCAN. By practical men.

Mr. DENISON. Is the St. Paul a weak road?

Doctor DUNCAN. I think from the definition I gave of a weak road, it is at present weak, based upon its inability to earn a return upon the investment at the present time.

Mr. SHALLENBERGER. Do you mean that consolidation of profitable roads should be permitted, and the only question is the consolidation of a strong line with one that is not profitable?

Doctor DUNCAN. No; I do not take that position. I do not mean to take that position. All I said in answer to Congressman Wyant was that if the situation was as he suggested, if the potential traffic is there——

Mr. SHALLENBERGER. Then it would be a profitable road.

Doctor DUNCAN. It could be made a profitable road.

Mr. SHALLENBERGER. Then the other road should be permitted to take it?

Doctor DUNCAN. I think so, in general. But what I meant was that even then it would require considerable study to see whether or not the public would be benefited.

Mr. SHALLENBERGER. You do not think that the logic is that if that road by itself would be a profitable road and could be managed so as to become within the rule of the commission as to what is an economical road, it should be allowed to stand by itself?

Doctor DUNCAN. I think even there, when the question of consolidation comes along, you would have to apply the test of consolidation to it. That road might be able to fulfill all the requirements of a consolidated system. You can not tell without investigating it.

Mr. SHALLENBERGER. Does this law contemplate consolidation of railroads whether profitable or otherwise?

Doctor DUNCAN. The transportation act, as interpreted by the commission, contemplates the consolidation of all railroad properties in the country into either 19 or 21 consolidated systems, regardless of

whether they are profitable or not. I was contending that that ought to be liberalized.

There is another phase to this situation. There has been developing during recent years a new type of transportation in the motor vehicle over the improved highways. It is probable that this competition between motor vehicles and steam roads is more severe and intense with short lines and with certain weak lines than with the larger systems.

In this connection it is interesting to note the arguments that have been used to secure permission for abandonment before the Interstate Commerce Commission in recent years. The total mileage abandoned between 1920 and 1925 was 2,439 miles. Of this number logging and mining roads, both main lines and branches, aggregated 1,351.3 miles, or 55.4 per cent of the total abandoned mileage.

Mr. WYANT. At this time I would like to ask you a question.

Doctor DUNCAN. Yes, sir.

Mr. WYANT. You gave some reference a moment ago to lines where certain mileage was abandoned.

Doctor DUNCAN. Yes, sir.

Mr. WYANT. You gave us some mileage, but not the number of roads. I would like to have the number of roads that were abandoned, if you have them.

Doctor DUNCAN. I think I give them in this discussion somewhere. I have just forgotten, but I think I will come to that.

Logging roads alone made up 62.8 per cent of this 1,351.3 miles. These figures appear in Public Roads for October, 1925, pages 169 to 173.

The causes for lack of traffic, as has been said, are numerous. Primarily, these causes are exhaustion of natural resources, competition of other roads, competition of motor vehicles, the rearrangement of lines of road, and other miscellaneous causes. A study of the commission's abandonment cases shows that exhaustion of natural resources was the primary cause of lack of traffic on 78 roads abandoned, representing 57.8 per cent of the total abandoned mileage. Competition of other roads represent 29.3 per cent of the total mileage; competition of motor vehicles 4.3 per cent of the total mileage; rearrangement of lines of road 1.3 per cent; and miscellaneous causes 7.3 per cent.

For fear I do not have the number of roads abandoned, I will see if I can not locate that information. Between 1920 and 1925 the number of roads abandoned was 120.

Mr. WYANT. What are you reading from?

Doctor DUNCAN. Public Roads, a journal of highway research, for October, 1925, page 171.

It seems to me that these facts have an important bearing upon the consolidation question. They appear to me to show beyond a shadow of a doubt the sheer impossibility of the practical working of any arbitrary consolidation plan.

Undoubtedly something must be done in aid of weak lines, unless Congress is willing to permit certain communities to lose their transportation facilities by steam roads. On the other hand, it is obviously an individual business problem in each case and can not be met by any general principle or rule. It would seem that the common-sense thing to do in this, as in all other cases, is to remove any legal or

other barriers in the way of possible consolidation or absorption of weak lines into larger systems, in order that the managements of the railroads may study the opportunities for improvement and for mutual advantage and for better service to the public. On the other hand, legislative action should be avoided which would tend to saddle weak lines on strong lines, upon which latter so great a proportion of the traffic of the country is borne, in such a manner that the general transportation service would be made to suffer.

It is generally admitted that in all cases supervision of the Interstate Commerce Commission should be required and the public interest should in all instances be safeguarded. It is equally necessary that Congress and the public should understand that the consolidation problem is one which depends upon a sound economic and commercial judgment. Consolidation will take place only upon such terms as appear sound and businesslike to the judgment of business men. Any attempt to consolidate otherwise is to place an obstacle in the way of accomplishing the very purpose desired.

The CHAIRMAN. The committee will have to adjourn, and you may resume again to-morrow morning. The committee will stand adjourned until 10 o'clock to-morrow morning.

RAILROAD CONSOLIDATION

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Thursday, May 27, 1926.

The committee met at 10 o'clock a. m., Hon. James S. Parker (chairman) presiding.

The CHAIRMAN. The committee will come to order.

STATEMENT OF DR. C. S. DUNCAN—Continued

Doctor DUNCAN. Mr. Chairman and gentlemen, on last Monday, in speaking before you on the subject of consolidation, I endeavored to develop these points, which I should like, if I may, to have the opportunity to summarize just at this time in order to connect what I have still to say with what I testified to the other day.

In the first place, I endeavored to develop that consolidation of railroads under existing and contemplated legislation means the concentrating of management, operation and ownership and control in large individual corporations, with the entire loss of identity for many properties now in existence, so as to result in a limited number of such corporations, the maximum so far suggested being 21.

Second. The purpose in view of such legislative action is primarily to preserve, maintain and strengthen the transportation service of the country, secondarily to realize whatever savings or economies in operation may be possible, and then to secure whatever advantage there may be in a simplified rate structure and in increased effectiveness in regulatory control.

Third. The history of railroad growth and development in the country shows that consolidation has been a continuing important factor, with resultant benefits to the carriers and the public.

Fourth. The pending problem for Congress to solve is, while maintaining ample safeguards to public interest, to remove legal and other obstacles in the way of progress, to create the required machinery for carrying justifiable consolidation proposals to a conclusion, to remove compulsion which tends to defeat the very purpose desired, to set up appropriate tests to determine what are proper consolidations, and then to leave the rest to individual initiative of railroad management.

Fifth. Congress and the public should clearly distinguish between the so-called "weak-line" problem and the problem of weak transportation service, realizing the former to be a question for individual and detailed study and the latter to be a real national problem which Congress must meet.

Sixth. So long as railroads are a private enterprise, as they now are, although devoted to public service and under public regulation, the terms and conditions under which consolidations take place must be of such a character as to appeal to the business sense and judgment of business men.

I should like to develop, if I may, two or three points further before concluding what I have to say. I should like to speak now briefly on what I call the tests of proper consolidation.

The tests which are to be applied to every system in order to determine whether or not it is a proper system are set up in the bill.

As applied to the corporation itself, the tests are—

First. That it be "strong." By this is meant, I presume, that the corporation shall be financially sound, so that it can obtain the necessary funds for additions and betterments at the lowest possible cost; that its sources of traffic shall be diversified and dependable, thus assuring, as far as possible, a continuity of revenues; that it shall be able, with adequate facilities, equipment, additional tracks, yards, and terminals, to offer service comparable with competitors and adequate to the public need.

Second. That it be "efficient." This means, I presume, that with the strength required by the first test it shall be neither too large, so as to become unwieldy or unmanagable, nor too small to secure the economies derived from large-scale operation; that it shall be in a position to make the best possible use of its rolling stock, yards, and terminals, so as to avoid congestion or transportation shortage on the one hand and idle facilities on the other; that it shall be, in a word, adequate to meet the transportation demands made upon it at the lowest possible cost.

Third. That it shall be well balanced. I assume that this means well balanced as to the system itself and also well balanced as that system is related to others with which it comes in competition. As to the system itself, I assume the phrase means that the system operated by a single corporation shall be large enough to justify the necessary operating overhead costs, such as the employment of operating officials, traffic officials, supervisors, traffic solicitors, etc.; that the functions of management may be so far separated as to secure adequate and effective attention without becoming top-heavy; that it shall reach such points as will give it a reasonable opportunity to originate as well-diversified traffic, so that depression in a single industry will not too greatly affect its total traffic; and that it shall become competitively important in freight transfer and delivery. In the relation of system to system the phrase must mean that each system shall be able to hold its own with other systems serving the same territory.

As applied to the relation of the carrier to the public, the tests are—

First. That existing channels of trade and commerce be maintained as far as practicable. This means that the public shall not, by any system of consolidation, be deprived of any existing opportunity by rail to reach present markets; that existing trade centers shall not be unfavorably affected by the merger of roads and that commodities shall continue to move to and from such centers as at present, or as they would move naturally in the future under changing economic conditions.

Second. That better service shall be afforded. This means, as I understand it, that no consolidations are to be permitted merely for the purpose of consolidating, but only on the basis that the public thereby will in some way be served more acceptably.

Third. That, while competition in service is to be maintained, the public is to be spared the burden of "unnecessary duplications and wasteful competitive methods," whatever they may be. A part of this probably refers to circuitous hauls, duplicated lines, yards, terminals, and such like.

Fourth. That every community shall be afforded adequate service as a part of a public duty owed to each community by the General Government and by the public service of the carriers. In the words of Senator Cummins—

> The great general public has the right to ask of its Government such a system of regulation as will give to each community the transportation upon which its life, its growth, its development, depends.

Insufficient and inadequate transportation service must go.

It becomes obvious that these tests can not be applied generally but only on the basis of a careful analysis in each case. For example, it may well be found, and indeed it will certainly be found, that a number of existing systems fulfill now all of these requirements. It will no doubt be found upon examination that there are individual lines and there are branches of existing systems which may not be able to justify their existence at all, and that the public may in fact be benefited by getting rid of them entirely.

Nothing is said, it will be noted, about the length of line necessary. The systems outlined in the tentative plan submitted by the commission range from 764 miles of road operated, as a minimum, to 22,889 miles or road operated, as a maximum. Other suggested systems aggregate more than 35,000 miles of road operated. Underlying all other tests, of course, and the very touchstone of all, is the public interest. How can the public be most adequately and efficiently served? That is the ultimate question.

Mr. COOPER. May I ask you a question at that point?

Doctor DUNCAN. Yes, sir.

Mr. COOPER. Do you know what the total mileage of the proposed merger of the Nickel Plate, and the Norfolk & Western, etc., was?

Doctor DUNCAN. Do you mean the Nickel Plate unification that included the Erie, the Chesapeake & Ohio, the Pere Marquette, and the Nickel Plate system?

Mr. COOPER. Yes, and, I believe, the Norfolk & Western. Do you know what the total mileage was?

Doctor DUNCAN. I think that that ran under 10,000.

Mr. THOM. The Norfolk & Western was not a part of it. You probably refer to the Chesapeake & Ohio.

Mr. COOPER. That is right.

Doctor DUNCAN. That is what confused me. I thought you meant the Chesapeake & Ohio.

Mr. COOPER. The commission refused to allow that merger.

Doctor DUNCAN. If you will recall the decision of the commission, refusal was not made on the basis that the resulting system would be too large. As a matter of fact, the decision of the commission said that the putting together of those lines physically and from an operating point of view would be justifiable, but they did object to the financial features of the case.

Under the general theory of the transportation act, 1920, and, as I understand it, under the theory which is to allow consolidations among the railroads, the public interest is promoted by an elimination of competition in freight rates. Indeed, economic necessity would

compel this even if the law said nothing in regard to it. Competition in service, however, is to be preserved. This is to become the stimulus for progressive economy and efficiency of railroad operation. With this preserved, therefore, the public is interested in adequate and efficient service. Hence, the ultimate problem goes much beyond consolidation to the more fundamental question of strengthening the whole transportation service of the country.

Only in so far, therefore, as consolidation can be shown to contribute to the solution of this underlying problem ought it to be authorized or encouraged by legislative action.

A great deal has been said on the question of possible economies and savings from consolidation, and I have brought together here in a brief statement some things that have been said by students and practical railroad men, which I thought might be of interest to the committee.

As indicated, there have been claims and counterclaims with respect to the possible savings which may be realized through a system of consolidations. There is no agreement among students of the question with respect to this matter. As indicated before, the consolidations which have taken place in the past admittedly gave to the public a superior quality of service at lower rates.

How much further we can go in realizing economies from large-scale production of transportation service is an open question? Here again is the individual case for individual analysis and study.

The possible sources of savings through consolidating railroads into large systems, which have been touched upon by those who have discussed the matter, may be enumerated as follows:

First. A small amount of savings may be possible in overhead expenses or in superintendence. No one here claims any substantial or important reduction in expenses and some claim that there is no possibility of savings at all.

Second. There may be savings in interline accounting. There is more general agreement that a saving worth while may be had from centralized accounting on a large system, as contrasted with a number of independent accounting systems, where organization duplicates organization, and also by a reduction in the actual need of accounting from interchange of traffic.

Third. Attention has been called to the possibility of saving in printing, where all of the printing is done by a central management for an extensive system, rather than by individual companies that may constitute that system.

Fourth. It is suggested that there may be savings in tariff publications. This would be an avoidance of duplicate tariff publications for each of the constituent companies.

Fifth. Reference is frequently made to the possibilities of savings in the purchases of materials and supplies by buying larger quantities than would be needed by the individual smaller constituent companies.

Sixth. Some think that through a standardization of methods and practice, and equipment, machines and parts, some savings may be realized by a large system that would not be possible to the constituent companies of that system.

Seventh. It is quite generally agreed that there is a possibility of saving in many cases by fewer and larger repair shops, which would be possible on a consolidated system and not possible on the lines of the constituent companies.

Eighth. It is further suggested that possibly a large consolidated road could make more economical use of equipment than could a number of small constituent companies, due to the fact that every road must have different types of cars to handle peak loads of commodities demanding special types of cars, and that a small road would not have sufficient traffic, or sufficiently diversified traffic to make the most efficient use of all the required equipment.

Ninth. There is also the saving from more direct routing of freight, where a consolidated system absorbs a more circuitous but parallel line. The use of the direct line for commodities demanding fast service, free from the possible obstruction of slow freight which may be directed by a more round-about route, will be possible in the consolidated system of these carriers.

Tenth. Where a system is sufficiently enlarged through consolidation, there may be an advantageous enlargement and improvement of terminals with certain resultant savings in terminal operations.

Eleventh. Mention is also made of the possibility of eliminating unnecessary duplicated service which is now afforded the public by a number of independent companies that might be brought under a single concentrated management and the public might be more efficiently served with fewer facilities.

Twelfth. Another source of possible saving is pointed to, where there is an opportunity for the merging of parallel lines into a single consolidation and the using of these parallel tracks in lieu of double tracks, without further duplication of facilities and additional capital expenditures, with certain resulting savings in operation.

Brief reference may also be made to the comments of certain practical railroad men bearing upon this point. In an article which appeared in the Harvard Business Review, July, 1923, entitled "General Aspects of Large Consolidations," Mr. Walker D. Hines wrote:

> Discussion of consolidation frequently assumes that those who believe in consolidation count upon great economies growing out of the elimination of executive officers and their staffs. It is not believed that any such sort of economy is relied on to an important extent and this for two reasons First, any such economy would be a negligible percentage of operating expenses, so that significant economies must be found in entirely different directions, and, second, it is highly probable, as above suggested, that the new organization of the consolidated systems, with the necessary separate regions qualified to act with substantial autonomy, will call for approximately as large an executive organization as at present.
>
> But the real economies which will come from consolidation will be far more important in scope and significance. The elimination of switching, the standardization of materials, the concentration of purchases, the sending of traffic by shorter routes, the elimination of interline accounting, the greater ability to utilize shops and equipment on all parts of the system to the maximum extent, all constitute real and important elements of economy. Perhaps one of the most important matters from the standpoints of economy and of improved service will be the fact that freight cars of the system will be "at home" on all parts of it, so they can be put at the public service without limitation and so, when in need of repair, they can be fully repaired where they are instead of being sent back to the home line, with possible necessity for various minor repairs away from home, to be later discarded or duplicated on the home line.

In the discussion of this phase of the general subject by Mr. A. J. County, vice president in charge of finance, Pennsylvania Railroad System, he said:

99790—26——4

Although smaller companies are sometimes more profitable than larger companies, and the local communities show more interest in their operation, there can be little doubt that consolidation has advantages, in developing companies with stronger credit, that can purchase materials and supplies and equipment on a better basis, have longer hauls for traffic, use equipment to better advantage, provide better shops and shop machinery, reduce the overhead costs, preserve more competition in service and facilities, simplify and improve rate regulation and rate divisions, and get greater economies in construction, maintenance, operation, and accounting.

There are inserted in the Senate hearings on S. 1870 a memorandum on the advantages that might be expected from proper consolidation, written by Mr. Edward Chambers, vice president, in charge of traffic of the Santa Fe Railway. It reads as follows:

1. Maximum tonnage and mileage which may properly be placed under control of single organization.
2. Reasonable competition in the different sections to help the accomplishment of satisfactory service, efficient and economical operation, and other things which come from competition.
3. Ability to give regular, adequate, and satisfactory service to the public.
4. Each system in one territory connected up directly with each other system in the other territories.
5. Each system with one or more gulf, ocean, or lake ports may reach any other port or the same port through connection with single system.

I might say in connection with that and in explanation of it, that that I understand that this brief memorandum was prepared by Mr. Chambers for his own chief executive. A copy was sent to a member of the Interstate Commerce Commission, and he placed it in the hearing. Therefore these comments apply, I presume, more particularly to proposals for the consolidation of western systems.

6. Maximum distribution of products originting in one system to destination on same system and minimum number of railroad systems for products to move over in reaching final market.
7. Western grain-producing territory tributary to Gulf ports connected to these ports and Lake ports and to primary markets by a single system and may reach Atlantic ports through one connecting system. Grain shipments originating on other systems either reach Gulf ports or Lake ports, or Atlantic ports direct or may reach them through one connecting system.
8. Fuel supply, both for railroad use and domestic consumption.
9. Ability to operate solid trains to and from large centers and important gateways and to have heavier car loading on less than carload shipments and more full carloads on less than carload traffic to single destination.
10. Car supply readily regulated because of the large number of cars necessarily on each system and the lesser number of railroads to be consulted about return of cars.
11. Tonnage of a character requiring special equipment sufficient to justify railroad owning adequate equipment to move the product to market.
12. Simplify the joint operation of terminals at large centers and have minimum number of junction points.
13. Simplify the movement of freight and passenger traffic and have minimum number of transfers and maximum operation of through trains, taking advantage of each opportunity to go around congested terminals.
14. Necessity for the pooling of equipment would be avoided, because of the need for so much equipment on the large system and the complication of returning cars to the owning line would be vastly simplified.
15. The larger system is usually in position to afford uniform service because if a crop failure or other disaster occurs on one part of the system things may be normal on other parts.
16. In forming systems the consolidation should be of complete railroads; otherwise means serious delay. It is best for many reasons not to separate a railroad built up as one. Some cases will be found where the situation would be improved by dividing a railroad, but it is best to leave such consideration to the consolidated organization.
17. Would simplify the handling of rate matters and printing of tariffs and the rate work before the Interstate Commerce Commission. Would reduce very much, also, the number of rate bureaus now in existence throughout the country and would simplify cooperation between Interstate Commerce Commission and the carriers, which is very necessary if the plan of Government regulation and private operation is to be successful.
18. Would enable the discontinuance of back hauls and permit hauling via most direct rails and would enable the nonuse of many junction points and permit the use of the most natural and economical junction.
19. Would enable the more regular and continuous movement of freight traffic, which would be very helpful to the shipper and for which a demand is being made by shippers generally and which is bound to come into effect sooner or later.
20. Would simplify cooperation between railroads by the reduced number and make it possible for the railroads through cooperation to do things which are now impossible and which would be very helpful in economical and satisfactory operation.

Those are, of course, the technical points which appeal to the practical operating man and, for a full appreciation, probably would require a knowledge of actual railroading. I comment only briefly on these suggestions.

It is apparent from these conclusions reached by students of the question and by practical railroad men, that there are those who believe opportunities exist to secure economies in operation by means of consolidation which may be, and undoubtedly will be, of a substantial character. Certainly no doubt can be entertained that consolidations which have taken place in the past have brought about such economies.

It must not, however, be concluded that every proposed consolidation will inevitably lead to such saving. If the policy of railroad consolidation is an established policy, as the acts of Congress and the repeated messages of the President indicate, then it remains the duty of Congress to see that no arbitrary or wholesale, or compulsory consolidation shall be forced upon the carriers on the one hand, and that no legal or other barrier should stand obstinately in the way of those who believe they can demonstrate advantages in public service by such movement.

If I may trespass upon your patience just a moment more, I will summarize the conclusions which I have reached from a study of this question.

This analysis of certain economic aspects of the consolidation question leads me to the conclusion that—

First. Progressive development in consolidating railroads has been a continuous factor in railroad history and is, therefore, no new thing.

Second. Further progress has been for some years retarded by the Sherman Antitrust Law and the Clayton Act, and even under the transportation act progress has been impeded by the requirement of an artificial program and by the lack of legislative machinery to bring consolidations into effect.

Third. Public opinion, as shown by the acts of Congress and the repeated messages of the President, has apparently indorsed the principle of such further consolidation as may be justified by the advantages to the public in the way of superior service at the lowest cost commensurate with adequate returns.

Fourth. Consolidation of individual properties is not a general question to be settled by general action, but each case stands alone with its own peculiar problems.

Fifth. Compulsion in consolidation is unwise and will prove unsatisfactory in its results.

Sixth. If there are to be consolidations, the system adopted should be voluntary consolidation; (*a*) under adequate safeguards to the owners, to all communities, and to the public; (*b*) along those lines which seem feasible to practical men; (*c*) on terms which are commercially justifiable; (*d*) where such inducements are afforded to management as will make it worth while and will attract capital by restoring credit; and (*e*) such as will tone up service and save transportation facilities as far as possible to all communities.

Seventh. The advantages accruing from consolidations hitherto made should be preserved, including the actions which have been taken under paragraph (2) of section 5.

Eighth. Systems not yet completly consolidated, though approved everywhere, due to legal obstacles, should be granted the power and right to complete the consolidation.

I have in mind such systems as the Pennsylvania, which still has 70 operating companies. It is a system that no one has suggested tearing apart and it may be that they would desire to secure further advantages through a complete consolidation which is not now possible. The same may be true of the New York Central and other large systems.

Ninth. With or without consolidation, the carriers should, in the public interest, be restored as fully as possible to a sound financial standing.

Tenth. The so-called "weak-line" problem should be distinguished from the consolidation problem and should be given adequate study and immediate consideration by the commission, so as to ascertain what individual roads are weak and why they are weak, and thus enable the commission to apply such remedies as are now within its power and ask for such additional power or assistance as may then prove necessary.

Eleventh. Particularly, nothing should be done by Congress that will in any way impair the capacity of those carriers that now bear the chief burden of transportation service and that during the past four years afforded the people of this country the best and most adequate service the world has yet seen.

In my judgment, these are the tests that are to be applied to the bill that is now before the committee.

The CHAIRMAN. Mr. Wyant desires to ask a question.

Mr. WYANT. I ask this question for my own information. Did you appear before the committee at any time on the long-and-short-haul bill?

Doctor DUNCAN. No, sir; I did not appear as a witness before the committee.

Mr. LEA. Referring to compulsory consolidation, in what form would you expect the Government to resort to compulsion?

Doctor DUNCAN. I would expect the Government to resort to compulsion in the form of penalizing the carriers unless they pursue an action of consolidation set down by the commission or other governmental authority.

Mr. LEA. What form of penalties could the Government impose for failure to comply?

Doctor DUNCAN. I am of the opinion that the Government is now imposing a penalty in the recapture clause. There has been suggestion also that the pooling of excess earnings and the direct distribution of those earnings to the other carriers——

Mr. LEA. Isn't that really an attempt to gain the advantage that is proposed by consolidation, in the recapture clause, on the assumption that in order to keep up the weak roads more and larger returns would be made to the strong roads than they were justly entitled to?

Doctor DUNCAN. Doubtless, sir; that may have been largely the purpose in mind. If I might go just one step further in reply to your first question: To my way of thinking, compulsion includes also the establishment of a cut-and-dried rigid plan, saying to the railroads, "Now, this is the way you must consolidate." That, to my mind, partakes of compulsion to a very considerable extent.

Mr. LEA. The penalty will come when the Government tells them what will happen if they do not comply?

Doctor DUNCAN. Yes, sir.

Mr. LEA. What would that be?

Doctor DUNCAN. It would be just what I have said now, that they will take from them earnings over and above such an amount. I suppose the other possibility would be that the Government might take the railroads themselves.

Mr. LEA. What I really had in mind was, what form of compulsion is commonly accepted as the proper form by those who advocate compulsory consolidation?

Doctor DUNCAN. I do not know of any agreement at all, but there have been suggestions such as I have made. For example, I have heard the suggestion that, to secure consolidation, the Government should buy up the roads, consolidate them, and sell them back; and, in addition to that, the pooling of earnings and the putting on of the recapture clause, all forms of penalty, unless they consolidate according to a cut-and-dried plan. That is what I had in mind.

Mr. LEA. If you were going to use compulsion ordinarily, I suppose that it would be presumed that compulsion would be directed to the nonconsenting roads. Could we do that when transportation regulations must apply to the country alike, to all roads, practically, in the rate-making groups?

Doctor DUNCAN. I do not know that I understand clearly the point of your question.

Mr. LEA. What I had in mind was this: For instance, if the recapture clause is regarded as a means of enforcing consolidation, that would apply to all the roads in the country and would not be directed particularly at those roads which refused to consolidate. Wouldn't that be true of any method the Government might adopt, with the idea of compelling consolidation?

Doctor DUNCAN. I should say it must be in the form of a national action; that certainly is true.

Mr. LEA. Of course, the power of condemnation might be used for consolidation.

Doctor DUNCAN. That is what would happen if the Government bought up the roads, I suppose, and then consolidated them and redistributed them.

Mr. LEA. That is about the only legal power we have, is it not?

Doctor DUNCAN. As far as I know; not being a lawyer, I can not tell, but that is all that occurs to me.

Mr. LEA. In your discussion you discussed primarily possible benefits of consolidation. Have you made a study of the other side of the question; that is, as to what would be the disadvantages?

Doctor DUNCAN. Of course, I have looked into that side of it, too. I did not discuss it, because at the opening of my statement I said that I am assuming it to be the policy of the Government to have consolidation. So I did not go back and discuss the arguments for and against consolidation. That was a question I did not touch upon.

Mr. LEA. I suppose you recognize, though, that there are two sides to the ledger in this question?

Doctor DUNCAN. There are two sides to the question.

Mr. LEA. To what extent, do you think the weak road is the important factor in this question of consolidation?

Doctor DUNCAN. I think it is a very important part of the entire question.

Mr. LEA. Would there be sufficient reason for the consolidation movement outside of the weak road, from the standpoint of the public?

Doctor DUNCAN. This is my position in regard to it, as I tried to develop. If you study the history of railroad development closely, you will see that consolidation has been a factor which has been characteristic of it all along the way. I do not conceive that that progress has reached a point where it can go no further. There may be opportunities for further consolidation with advantage to all parties and I was saying that if you accept it as a policy of the Government, and the railroads should seek further advantage by further consolidation, then you ought to make it possible for them to do so. Some parts of the country have a more developed railroad net than other parts of the country.

It may be that there would be opportunities for consolidation in some parts of the country equally advantageous with anything that has ever taken place. That is a matter for particular study.

But if there are men who believe that in the interest of better transportation service and their relations to the public, they could go on and consolidate, then I say they ought to have an opportunity to do so under proper safeguard. That is the point I am trying to make.

Mr. LEA. To what extent do you think the country is suffering from the likelihood of abandonment of roads that would materially interfere with the transportation system?

Doctor DUNCAN. That is rather difficult to answer, sir. I will say that I think there are some sections of the country, some communities, where the steam transportation facilities are threatened. I do not think that it is a great national problem at this time.

Mr. LEA. If I understood you rightly, you stated that there had been an abandonment of about 2,000 miles of road in five years.

Doctor DUNCAN. Yes, sir.

Mr. LEA. And a large percentage of these roads were logging roads which undoubtedly were built with a recognition that they would have to be abandoned in a matter of time.

Doctor DUNCAN. That is true.

Mr. LEA. So that the amount of abandoned roads is an insignificant feature of the question, is it not?

Doctor DUNCAN. Quite true. But you realize how very difficult it is to abandon a railroad. If you read at all the record of any abandonment case, you will see how difficult it is, when you have a railroad established and in operation, and communities along the rails, to get rid of that railroad. It is not an easy matter at all.

Mr. LEA. Now, as to these weak roads, on the question of making the settlement of it on a business basis: How is it possible to do that when the road itself is not a business proposition, when it is not built on an economic basis?

Doctor DUNCAN. The answer in my mind to that question is only this: That in all this matter of weak lines you can not generalize. You have got to know about each specific case.

Perhaps I could make up my mind wisely or unwisely, about an individual road, if I knew all the facts regarding it, but I do not think that I would be in a position at all to pass generally on the question. That is what I was trying to bring out.

Mr. LEA. Let us take an individual road that has good management, but is not making a fair return. It is not in a condition to give good service, because it is not making a fair return. If we maintain that road, it means that somebody has got to stand the responsibility for that loss. In other words, you might say that it is in the nature of a subsidy indirectly to that road. The question is, Who should and can justly be charged with it? It comes to that if we are going to maintain the road.

Doctor DUNCAN. I think that it comes about to that and then you come back to the question, Here is a community demanding steam transportation service. Is that community willing to pay the expenses for maintaining that transportation service, or is it not? If the people of that community are not, and they can not, then I do think it comes back to just what you said.

Mr. LEA. Economic conditions have placed that loss at present on the stockholders of the road, have they not?

Doctor DUNCAN. Yes, sir.

Mr. LEA. The question is whether we ought to take that up and transfer it to somebody else.

Doctor DUNCAN. I would not say that that is the question. The question is, I think, a matter of giving study to that particular situation. It may be that consolidation would be the solution of the question, and that particular road, now weak, even though under good management, might, as a part of a large system, be made to pay. I do not see how you can deal generally with the weak-line problem.

Mr. LEA. Of course, that might be true in some cases, but as to the road that was economically unjustifiable, incapable of making a fair return, the problem is to get somebody to assume the burden.

Doctor DUNCAN. Of course, I assume that you mean by economically unjustifiable that perhaps it should never have been built.

Mr. LEA. Yes, sir.

Doctor DUNCAN. I do not see why, under those circumstances, the owners of the railroad should not be the ones to suffer.

Mr. LEA. About the question of competition: I take it your theory is that where there are two strong roads supplying a big community, the two should be permitted to continue with the idea of giving competition in service.

Doctor DUNCAN. That is what I expressed.

Mr. LEA. Is not competition in service as well as competition in prices a source of a good deal of the loss that now occurs to railroads?

Doctor DUNCAN. I think that our American theory is that with all the disadvantages, the advantages far outweigh them; because when you have competition, you have an incentive for progress in efficiency and reducing the cost of operation all the way through. That is our whole theory of competition, because in all competition there is waste. But if we do not believe that the advantages far outweigh the disadvantages, then we have got to change our entire economic system.

Mr. HOCH. Doctor, your testimony has been based on the assumption that consolidation is an adopted policy of Congress. Is it not true that this bill would establish a policy of consolidation in a much more positive and definite way than exists under the present law?

Doctor DUNCAN. Mr. Hoch, I did not look at it in quite that way. As a matter of fact, I think it is not quite so definite but essentially, as I understand the bill, it simply makes possible the carrying out of the policy as announced and established in the transportation act.

Mr. HOCH. You mean that it is not so definite in the statement of the policy of consolidation as the present law?

Doctor DUNCAN. Only in this language in section 202. In the transportation act you have a requirement for a specific plan for all the railroads in the country; they are to be put in that particular category within a reasonable time, let us say, but with the whole idea that within a brief period we are going to have the railroads of the country put into that limited number of systems.

Mr. HOCH. Is there any statement in the present law to that effect, that there must be in any sense a compliance with that general plan?

Doctor DUNCAN. You mean in the transportation act?

Mr. HOCH. Yes, sir.

Doctor DUNCAN. No; I do not understand that there is.

Mr. HOCH. Isn't this rather the situation? Prior to the transportation act, consolidations were largely impossible because of the antitrust law?

Doctor DUNCAN. True.

Mr. HOCH. Congress here simply provided that under certain conditions, there might be consolidations, the antitrust laws to the contrary notwithstanding. Then it was provided that the commission should draw up a plan of consolidated systems for the country and no consolidation should be permitted which was not consonant with that plan. Isn't that as far as the present law goes?

Doctor DUNCAN. No, sir; it went a step farther than that.

Mr. HOCH. In what respect?

Doctor DUNCAN. I am speaking of my own interpretation of the transportation act. It tacked on a little clause under section 15–a, to take away half of the earnings above 6 per cent. I interpret that to be the incentive and the motive and the impelling economic motive for bringing them within the consolidation.

Mr. HOCH. There is nothing said about that in 15–a?

Doctor DUNCAN. There is nothing said, but that is the effect of it.

Mr. HOCH. Can not that, on the other hand, be interpreted as a plan to take the place of consolidations, rather than to promote them?

Doctor DUNCAN. Of course, I would have to admit each one can put his own interpretation upon it, but that is the way I look at it; that there is the economic pressure on the railroads to fulfill the consolidation requirements. I may be wrong, but that is my interpretation of the motive.

Mr. HOCH. I do not find in the present law anything at all specific like is provided in this bill as to a declaration of policy. I am not now arguing the widsom of it, but it seems to me that this does set up in a much more positive way a consolidation policy. In this bill we propose to seek the consolidation, to encourage the consolidation, whereas in the present law all that we provide is that if they do consolidate, they can only consolidate under a plan that the commission may set up. In other words, Congress did not want to throw down the bars entirely and say that any consolidation might be made.

Doctor DUNCAN. No, sir.

Mr. HOCH. And set aside the antitrust laws entirely. And so it said:

> We will only permit the antitrust laws to be set aside in the event that the consolidation is consonant with the general plan set out by the commission.

As I read the law, that is the only thing there is in the law on consolidation. I do not find any declaration of policy here except the one which you draw by inference from section 15a, and I interpret that entirely in a different way; 15a does not mention consolidation.

Doctor DUNCAN. I quite agree that it is not expressed there. That is my interpretation of it, of the effect of that clause in the transportation act, and I feel quite sure I am not alone in that. But it is an interpretation. It is not specifically stated.

Mr. HOCH. Do you think it has resulted in promoting consolidation?

Doctor DUNCAN. I think there are impediments in the way of securing consolidation elsewhere in the bill. Otherwise there would have been made more consolidations than we now have, and I am very frank to say that there have been a number of so-called consolidations under section 2, a surprising number, and I suspect that if the way were open and free, a great many more would take place.

Mr. HOCH. Let us set aside for the moment the assumption that consolidation is an adopted policy and that consolidations are to be encouraged. You have stated, as I understood, that there is a very great difference of opinion as to whether any considerable economies will be effected.

Doctor DUNCAN. Yes, sir.

Mr. HOCH. So we can not give that as any controlling reason for consolidation—that is, to promote economies. Then you have stated that you have thought that the problem of the weak lines was an entirely separate one and should be considered by the commission entirely apart from the matter of consolidation.

Doctor DUNCAN. That is true.

Mr. HOCH. If that be true, from the standpoint of public policy, why should we encourage consolidations? What great national interest is to be served by promoting consolidations of railroad systems?

Doctor DUNCAN. Well, sir, the great national interest and the only one that I can see is to enable the railroads themselves, carrying out their own initiative and through consolidations in so far as they may be approved, to strengthen the general transportation system of the country.

There may be instances—I do not think that it is national in character at this time—but there may be instances where important railroads, essential to the life of various communities, might be saved in that way. I did not, of course, intend to leave the impression that this is emergency legislation which must be enacted right now. I was not discussing it from that point of view.

Mr. HOCH. You spoke of consolidations as improving the credit of the roads. That would apply only to the weak roads, would it not?

Doctor DUNCAN. I am not so sure.

Mr. HOCH. Let us take some great, strong road, such as the Santa Fe. Do you apprehend any consolidation scheme that would strengthen the credit of the Santa Fe Railroad?

Doctor DUNCAN. Oh, no; not a system like that. They would lend their sound credit to any road they took in, but I was thinking of another case on the other side, the original Nickel Plate consolidation. I rather believe that when that consolidation took place—I mean of the Nickel Plate, the Lake Erie & Western, and Clover Leaf—that all three of those roads, would be called weak roads, but being combined, have risen out of the weak-road class. That is what can be done.

I think that a great deal of that is undoubtedly due to the fact that they have consolidated, although they might all three be in a somewhat better situation now than they were when they consolidated.

Mr. HOCH. Has that resulted from economies in operation, and a bettering of the condition of the roads? In what respect has the consolidation brought that about?

Doctor DUNCAN. The consolidation, as I understand it, has brought about improved management of all three working now as a single unit; better traffic for all the three instead of for the individual roads. The president of the road testified before the commission, in the general Nickel Plate hearing recently, that he was able to secure substantial economy by certain standard practices he was able to introduce on all three systems. I think his traffic is probably more diversified than it was when they were an original system. All of those things were combined.

Mr. PHILLIPS. They would be better able to compete with the strong roads.

Doctor DUNCAN. As they grow stronger, undoubtedly.

Mr. COOPER. Is the Nickel Plate in pretty good shape at the present time? Would you call it one of the strong roads?

Doctor DUNCAN. I think it has risen out of the weak road class.

Mr. COOPER. I want to ask you this question. From Buffalo to Chicago, the Nickel Plate and the Erie almost parallel each other almost all the way. The Erie is not in as strong a class as the Nickel Plate. Do you believe consolidation of those two lines might be for the benefit of both roads and for the public service, too?

Doctor DUNCAN. I was privileged to sit through most of the hearings on that recent Nickel Plate unification proposal and I must say, if my opinion is worth anything at all, that I think they were able to demonstrate that it would be of advantage to the public and to those particular roads if they were consolidated; and as the decision of the commission itself showed, they were able to convince a majority of the commission that that would be true.

Mr. COOPER. But yet the commission turned them down.

Doctor DUNCAN. But for another reason. They did not approve of the financial structure.

Mr. HUDDLESTON. Doctor, do I understand you correctly as holding that competition between railroads in the matter of rates is undesirable from the standpoint of the public?

Doctor DUNCAN. Impossible; not only undesirable, but impossible.

Mr. HUDDLESTON. Why is it impossible?

Doctor DUNCAN. Because what you have under that kind of a system would be exactly what we had in the seventies, when you had an attempt at competition in rates and rate wars arose and they began to destroy one another. When they reach that point, regardless of law, the rates are going to be the same.

Mr. HUDDLESTON. It is when competition reaches the point of impairing the ability of the road to give service that it is harmful?

Doctor DUNCAN. Yes, sir.

Mr. HUDDLESTON. At any point short of that competition in rates would not be harmful. In short, if the competition were at the expense of the stockholders only, it would not be harmful?

Doctor DUNCAN. I do not think I could quite subscribe to that, but let me put it this way: The railroad system is of such a character that so many of the expenses go right on regardless of traffic, that your roads are going to get traffic if they can, and anything that will pay out-of-pocket cost. When you have competition in rates, you are driven to that situation and you can not make such a return on your investment on the basis of competition in rates that will maintain those carriers.

Of course, the owners of the railroads will suffer, but I think that everybody else suffers, too. The very nature of the railroad industry, I think, has led everybody to believe that you must have the same rates in a competitive territory, and that is why we have come to the position which I feel is sound, that we might as well put rates under the regulation of the Government and have them the same.

Mr. HUDDLESTON. Under the present grouping system, we have certain carriers that are earning less than nothing, and other carriers in the group that are earning from 10 to 20 per cent on their value. So far as competition would be harmful, the present system is harmful to those roads that are not earning. So far as it is advantageous, if it went no further than reducing the returns of these more profitable roads to a reasonable amount—if it went no further than that, it would be advantageous to the public, would it not?

Doctor DUNCAN. Yes, but it could not go "no further than that." Because the rates upon which those strong carriers could live would, of course, put other carriers in the hands of a receiver, if not entirely out of business.

Mr. HUDDLESTON. As an economist, you are then an advocate of the grouping system for rate making?

Doctor DUNCAN. Grouping system for rate making?

Mr. HUDDLESTON. Yes.

Doctor DUNCAN. Yes; I think that is inevitable, too.

Mr. HUDDLESTON. Do you feel that our present groups are wisely arranged?

Doctor DUNCAN. I personally feel that the rate-making districts probably should be restudied and probably remapped. That is my personal opinion at this time.

Mr. HUDDLESTON. You do favor competition in service, as I understand it?

Doctor DUNCAN. Yes, sir.

Mr. HUDDLESTON. You cite with approval what Senator Cummins said on that subject?

Doctor DUNCAN. Yes; I do approve of what he said on that subject.

Mr. HUDDLESTON. Competition in service means better roadway, better equipment, more plentiful equipment, more attractive equipment, and better and more attractive terminals; matters that might be classed in the realm of advertising, more efficient corps of solicitors, etc. All of that costs money, does it not?

Doctor DUNCAN. Yes; of course, it all costs money. If I might just say this, that faster schedules and perhaps more frequent schedules also are a part of competition in service.

Mr. HUDDLESTON. More trains, faster trains—all of it costs money.

Doctor DUNCAN. All of it costs money.

Mr. HUDDLESTON. Now, so far as the financial aspect of that kind of competition is concerned, how do you differentiate it from competition in rates, in principle?

Doctor DUNCAN. In principle, I distinguish it in this way: That the two roads that are competing in service for the opportunity to secure the traffic on the same freight-rate schedules—whatever they can offer the shipper in the way of service to get that is, of course, competition in service on the same rate basis. It does not permit the road that happens to be in a strategic position to reduce its freight rates to such a point that it could get along, and drive its competitor out of that traffic business. It seems to me that there is a distinction that is fairly clear.

Mr. HUDDLESTON. Now, that competition in service does not necessarily include things that are of substantial moment to the public?

Doctor DUNCAN. Well, almost altogether. Everything that is of substantial moment to the public, except what would be a nominal cost or charge. I mean to say that so far as I know anything about the railroad business any flourishes that are not of consequence are not at all a burden or expense to the carrier.

Mr. HUDDLESTON. I see a handsome picture here on the wall of a part of a railroad system. You see them everywhere—not that particular picture, but similar pictures, and I refer to that merely as an instance of schemes of advertising which cost money, and a lot of it. We see these expensive advertisements in the magazines, and there are many publicity stunts of one kind and another. Now, how is the public benefited by that kind of expenditure?

Doctor DUNCAN. Well, I hope at least that they think better of their railroads from seeing those things; at least that. But, after all, the railroads are a private enterprise, and they must have an opportunity to make themselves known and to make themselves as attractive as possible. But I do not know of any instance where any expenditures of that sort are a burden upon the carrier. Of course, they cost money, but relatively a very small amount.

Mr. HUDDLESTON. Well, a thousand and one things cost money in relatively small amounts which in the aggregate become quite important. I cite that merely to call your attention to the fact that competition is an effort to get business, where it is devoted to that alone, is of no public benefit.

Doctor DUNCAN. Oh, yes; I beg to differ with you there. I think that is exactly a source of very great public benefit. If I did not believe that, I would be far along on the way to Government ownership and operation of the railroads.

Mr. HUDDLESTON. Did you understand me to confine the competition merely to the object of getting business?

Doctor DUNCAN. Yes; I understood that, too; because in getting the business they are going to have their operation on such a level that it will be attractive to the shippers, and that is what we all want.

Mr. HUDDLESTON. Of course that relates to handling business, not to getting it; and that is the distinction that I was trying to make.

Doctor DUNCAN. Excuse me. I was going to say that if a solicitor goes to a shipper and says, "We want your traffic," he will not stop there. He will tell the shipper what we can do for him, and he must be in a position to do that, or he will not get any more traffic. Now, I say that that is the element of competition that keeps the entire railroad operation toned up, and far outweighs any expenditure.

Mr. HUDDLESTON. Let us assume two competing lines between two cities. They are both equal in essentials. One of them engages in an expensive advertising and soliciting campaign; the other does not. The one gets business; the other does not get it. How is the public benefited by that?

Doctor DUNCAN. I can hardly understand the assumption; because I think, if they are on an equal basis, then you will find them both out soliciting the traffic.

Mr. HUDDLESTON. They are both duplicating this effort to get business, and at the end they are right where they started, because one of them gets the business; and all this overhead is just lost motion and waste.

Doctor DUNCAN. What I mean is, taking two carriers serving the same shipper, and with approximately equal railroad facilities, then I say that neither one of the carriers can take all of the traffic away, but in the effort to get their share of the traffic you are going to have better railroad operation on both of those roads. That is where the public benefits; and those benefits, in my judgment, far outweigh any expense from duplication of service. Otherwise we must throw over our entire system of competition.

Mr. HUDDLESTON. Of course competition involves duplication in service.

Doctor DUNCAN. Competition involves necessarily duplication in service.

Mr. HUDDLESTON. Now I have gotten your views on that point, and I will pass to something else. There were involved in the proposed Nickel Plate consolidation certain matters of financing which I take it fall particularly within your field of consideration. If I recollect aright, one of them was the issuance of nonpar value stock and the lodging of control of the road in a small group that possibly would have little or no real ownership in the consolidated concern.

Doctor DUNCAN. I beg your pardon; was that what you meant to say? Was it nonpar value or nonvoting stock?

Mr. HUDDLESTON. I do not recollect. Perhaps I am a little confused on that. Both of them are objectionable from my point of view, and I want to get some expression from you on the subject, as to what you consider wise economics with reference to the issuance of nonpar value stock and nonvoting privilege stock.

Doctor DUNCAN. My personal opinion on nonpar value stock is that it would be an extremely unwise thing to do. I never did believe in nonpar value stock, or stock without any par value at all attached to it. I think it would lead to great confusion in dealing in securities of that sort, and would open many opportunities to manipulation that are not now possible.

On the other question, which of course is a very important question, about the concentration of control in a small amount of voting stock, I am of the opinion that the voting stock should be widely dispersed rather than concentrated, generally speaking; although on the other hand if I had been a member of the commission, I think that with the supervision of the railroads which we now have in the commission, the unfortunate things which might result from concentrating control in a small group of voting stock would be greatly minimized. But in principle I object to it.

Mr. HUDDLESTON. Do you not think, as a matter of principle, the owners of a public utility should be not only privileged but required to exercise and perform their responsibilities as owners?

Doctor DUNCAN. I am in thorough accord with that; yes.

Mr. HUDDLESTON. May I call your attention to the fact that this bill carries no safeguards on that subject?

Doctor DUNCAN. Nor, so far as I know, does the existing law—the transportation act; and yet this particular unification was refused on that basis.

Mr. HUDDLESTON. It was refused merely in the broad discretion of the Interstate Commerce Commission. And you feel that it is good economic policy for Congress to clothe its agency, the Interstate Commerce Commission, which is merely doing the work of Congress, with power to do something which Congress would not under any conditions do if it were performing the function itself?

Doctor DUNCAN. I should think that would be your responsibility, yes; otherwise you have not given your agent full instructions.

Mr. HUDDLESTON. Then it would not be inharmonious with your point of view if this bill should be changed in such manner as to prevent consolidations on this financial cutthroat basis? I do not know what other word to use to express it, and that seems to fit the case pretty well in my imagination. Do you not think we ought to safeguard it? Do you think that legitimate interests could rightfully object to such safeguards?

Doctor DUNCAN. I should not think that they would find great objection to it. As I said before, since your own commission has such control over the issue of securities now that any dangers that might arise from that are greatly minimized, I would not anticipate any particular objection.

Mr. BURTNESS. I was rather interested the other day in trying to follow you when you argued the question as to what is actually a weak road, and how a weak road of to-day may be out of that class a year or two hence. If I remember correctly, you indicated the earnings of a number of roads which Senator Cummins in some article or other had intimated, at least, were weak roads some three or four years ago, and you gave some figures as to the returns of such roads since that time. I believe that something like seven of those roads were during the last year roads which made no return whatsoever. I was wondering whether those seven, for instance, had remained in that same condition during all the years that have intervened, and whether there had been a sort of gradual improvement in all of them, or whether there had actually been some roads really getting out of one class and into the other.

Doctor DUNCAN. Or some of them constantly in the red?

Mr. BURTNESS. Or some of them constantly in the red; yes.

Doctor DUNCAN. As I recall the figures, the group did not remain the same throughout as to deficits, but I think you could find some roads that suffered a deficit every year in that period.

Mr. BURTNESS. And whether, as a whole, the roads that were in that group had held from year to year almost the same position that they had when Senator Cummins wrote his article.

Doctor DUNCAN. I do not think that you could find that at all in that group. They varied from year to year.

Mr. BURTNESS. And varied considerably?

Doctor DUNCAN. Considerably, I should say. That is, their losses in one year would be greater than their losses in another year.

Mr. BURTNESS. I take it that you regard this bill as purely a voluntary consolidation bill in its entirety.

Doctor DUNCAN. I so understand it; yes, sir.

Mr. BURTNESS. And yet the bill has in it, as I understand it, a provision which at least squints the other way. What I mean is this: Assuming that two or more carriers have agreed upon a method of consolidation, they submit their entire plan to the commission. The commission would have the right under this bill to say to these carriers, "No; you can not consolidate unless you take two other lines, X and Y, into this consolidation." Does that or does it not, in your opinion, change the fundamentals at all as to making this a sort of compulsory consolidation bill?

Doctor DUNCAN. I think the roads, in their nature as public carriers, would have to assume that much, anyway.

Mr. BURTNESS. Of course, if they consented to that, it would, in law at least, be a voluntary consolidation eventually.

Doctor DUNCAN. Yes.

Mr. BURTNESS. Although they might consent to it under more or less persuasion?

Doctor DUNCAN. Yes; that is true. That is clearly in the bill.

Mr. BURTNESS. And is not that about the only provision that there is in the bill which tends to safeguard the rights of the public. if the public have any rights, in the matter of getting the so-called weak lines which may be absolutely necessary in our system of transportation into the consolidated system?

Doctor DUNCAN. I think that is the most definite feature in the bill. I rather fancy that if this bill could become a law providing ample means for consolidation—this is my opinion—you would find that there might be competition between carriers for some of these weak lines to a far greater extent than is now apparent. But what you have said is the only specific feature in the bill that I know of that meets the particular point you suggested.

Mr. BURTNESS. And I take it that this bill is entirely lacking in so far as instructions are concerned to the agency of Congress—that is, to the commission—as to the policy that it should adopt in passing upon that immediate question; that is, as to whether it should require other lines to come into these proposed consolidations; that matter is left purely to the discretion of the commission.

Doctor DUNCAN. Yes, sir; it is left with the commission.

Mr. BURTNESS. Assuming that legislation such as is proposed here is enacted, would you, as an economist, Doctor Duncan, attempt to estimate at all the length of time that would probably be required to get these consolidations effected in accordance with the general policy as laid down in the declaration of this bill, or would it be impossible to make an estimate?

Doctor DUNCAN. I can tell you what my opinion is in regard to it.

Mr. BURTNESS. I did not know whether you had any opinion or not. If you have, I would be glad to get it.

Doctor DUNCAN. Yes; I have one. It does not amount to much, but I have one.

If a bill like this becomes a law, then you are going to have a process of consolidation continued for 75 or 100 years in this country; because I do not think that we can now see the limit of consolidation in this country. We must finally, I think, face this question as to whether we can have a transcontinental system in this country. Nobody, so far as I know, among the practical men has yet seen the practical possibilities of it, but I am not so sure but what they may sometime in the future; and all that I see in this bill is to permit, under supervision and safeguard, the intelligent consolidation of railroads in this country such as took place during the period of their formation and prior to the time when the antitrust law put a stop to it.

Now, I do not see in the near future the point when consolidations will be entirely completed.

Mr. BURTNESS. And, of course, the question as to what would be regarded as a complete consolidation, and what would not be, is in itself a very controversial question?

Doctor DUNCAN. Yes, sir.

Mr. BURTNESS. But on the whole, if I understand you correctly, you feel that even with the enactment of some such legislation as this the consolidation would be a relatively slow process?

Doctor DUNCAN. Not quite that. I think that a great many consolidations would take place, but that the process of consolidation would continue for many years to come.

Mr. BURTNESS. And you do not conceive now of a likely consolidation in the future that would create even one system that would be entirely transcontinental?

Doctor DUNCAN. I do not know of any such proposal. There may be some, but I do not know of any.

Mr. BURTNESS. I was wondering, Mr. Chairman—perhaps this witness can tell us—whether this so-called Ripley plan, both as originally proposed and as modified somewhat by the commission in making its tentative proposal, could be inserted in the record, without taking up too much space, so that we could at least see what it is, if we are interested in finding out how it affects our own sections of the country.

Mr. NEWTON. If we do that, let us put it in in type so that we can read it without losing our eyesight.

Mr. BURTNESS. Of course I did not mean to put in all of the details, or anything of that sort; but I think it would be well if we could have the plan before us in its general outline.

The CHAIRMAN. We will have it put in the record.

Mr. NEWTON. I think the idea is a good one; but so many of these inserts are put in in small type that it is a waste of paper. A man can not read them.

Mr. BURTNESS. I agree with Mr. Newton on that point.

Mr. NEWTON. It is very poor economy, it seems to me.

Mr. BURTNESS. But perhaps Doctor Duncan can tell us what would be required in order to give us the main general outlines, so that we can have them in connection with these hearings.

Doctor DUNCAN. Mr. Burtness, the report of the commission carrying the tentative plan is very brief. It runs from page 455 to page 464.

The CHAIRMAN. What document is that, Doctor Duncan?

Doctor DUNCAN. This is Docket No. 12964, Consolidation of Railroads, 63 I. C. C., pages 455 to 464.

Mr. BURTNESS. Does that give the general outlines?

Doctor DUNCAN. That gives the outline of the roads; the systems of roads.

Mr. BURTNESS. I think that would be sufficient.

The CHAIRMAN. I am advised by the clerk that that document is exhausted. So we will have the stenographer make a copy of it and print it in the same type in which the hearings are printed, if we may borrow it from you for that purpose.

Doctor DUNCAN. Yes, sir.

Mr. BURTNESS. Is there such a thing as a map prepared to show these proposed consolidations?

Doctor DUNCAN. There are many maps, I think. I do not know of one now available. Doubtless the commission could give you one.

The CHAIRMAN. We will have this material printed in the record.

(The matter referred to is as follows:)

INTERSTATE COMMERCE COMMISSION—No. 12964

CONSOLIDATION OF RAILROADS

In the matter of consolidation of the railway properties of the United States into a limited number of systems. August 3, 1921. Tentative plan of the commission.

By the commission:

This tentative plan is prepared and served under paragraphs (4) and (5) of section 5 of the interstate commerce act, which read as follows:

(4) The commission shall as soon as practicable prepare and adopt a plan for the consolidation of the railway properties of the continental United States into a limited number of systems. In the division of such railways into such systems under such plan, competition shall be preserved as fully as possible and wherever practicable the existing routes and channels of trade and commerce shall be maintained. Subject to the foregoing requirements, the several systems shall be so arranged that the cost of transportation as between competitive systems and as related to the values of the properties through which the service is rendered shall be the same, so far as practicable, so that these systems can employ uniform rates in the movement of competitive traffic and under efficient management earn substantially the same rate of return upon the value of their respective railway properties.

(5) When the commission has agreed upon a tentative plan it shall give the same due publicity, and upon reasonable notice, including notice to the governor of each State, shall hear all persons who may file or present objections thereto. The commission is authorized to prescribe a procedure for such hearings and to fix a time for bringing them to a close. After the hearings are at an end the commission shall adopt a plan for such consolidation and publish the same, but it may at any time thereafter, upon its own motion or upon application, reopen the subject for such changes or modifications as in its judgment will promote the public interest. The consolidations herein provided for shall be in harmony with such plan.

Under our direction Prof. William Z. Ripley, of Harvard University, has prepared a report to us, which is the appendix. In some respects our tentative plan does not follow his recommendations, but presents alternatives thereto for like consideration. We indicate the main differences. We have sought to minimize dismemberment of existing lines or systems. This tentative plan is put forward in order to elicit a full record upon which the plan to be ultimately adopted can rest, and without prejudgment of any matters which may be presented upon that record. Whenever we refer to a property, the properties controlled thereby under lease, stock ownership, or otherwise should be understood as included unless otherwise indicated.

We find for the purposes of this tentative plan that the railway properties of the continental United States may be consolidated under the statute into the following systems:

SYSTEM NO. 1—NEW YORK CENTRAL

New York Central.
- Pittsburgh & Lake Erie.
- Rutland.
- Michigan Central.
  - Chicago, Kalamazoo & Saginaw.
- Cleveland, Cincinnati, Chicago & St. Louis.
  - Cincinnati Northern.

Western Maryland.
Fonda, Johnstown & Gloversville.
Lake Erie & Pittsburgh.
Central Indiana.
Pittsburgh, Chartiers & Youghiogheny.
Monongahela.
Boston & Maine.
Maine Central.
Bangor & Aroostook.
And all railway properties controlled by the above carriers through lease, stock ownership, or otherwise, except:
- Lake Erie & Western and Toledo & Ohio Central, both now controlled by New York Central.
- Zanesville & Western and Kanawha & Michigan, both now controlled by Toledo & Ohio Central.
- Indiana Harbor Belt, now controlled by New York Central, 30 per cent; Michigan Central, 30 per cent; Chicago & North Western, 20 per cent; Chicago, Milwaukee & St. Paul, 20 per cent.

NOTE.—Professor Ripley recommends the inclusion of the Western Maryland in system No. 5, Nickel Plate-Lehigh Valley.

Professor Ripley makes no specific assignment of the Fonda, Johnstown & Gloversville.

The Lake Erie & Pittsburgh; Central Indiana; Pittsburgh, Chartiers & Youghiogheny; and Monongahela may be incorporated in either system No. 1 or No. 2. Professor Ripley makes no specific assignment of these four roads, which are controlled jointly in the interest of the New York Central and the Pennsylvania.

The Boston & Maine, Maine Central, and Bangor & Aroostook may be included in system No. 7, New England, or system No. 7a, New England-Great Lakes. Professor Ripley rejects the trunk line treatment of the New England roads, but we present this alternative with a view to developing the situation upon hearing.

The Lake Erie & Western may be included in system No. 5, Nickel Plate-Lehigh Valley.

The Toledo & Ohio Central, Zanesville & Western, and Kanawha & Michigan may be included in system No. 9, Norfolk & Western.

The Indiana Harbor Belt is reserved for consideration in connection with terminal situations.

SYSTEM NO. 2—PENNSYLVANIA

Pennsylvania.
- West Jersey & Seashore.
- Long Island.
- Baltimore, Cheaspeake & Atlantic.
- Cumberland Valley.
- Maryland, Delaware & Virginia.
- New York, Philadelphia & Norfolk.

Pittsburgh, Cincinnati, Chicago & St. Louis.
- Waynesburg & Washington.

Grand Rapids & Indiana.
Cincinnati, Lebanon & Northern.
Ohio River & Western.
Louisville Bridge & Terminal.
Wheeling Terminal.
Toledo, Peoria & Western.
Lorain, Ashland & Southern.
Lake Erie & Pittsburgh.
Central Indiana.
Pittsburgh, Chartiers & Youghiogheny.
Monongahela.

And all other railway properties controlled by any of the above carriers under lease, stock ownership, or otherwise, except the Norfolk & Western and railway properties controlled by it, which may included in system No. 9, Norfolk & Western.

NOTES.—The Lorain, Ashland & Southern may be included in system No. 4, Erie, which owns one-half the stock, the Pennsylvania owning the other half.

The Lake Erie & Pittsburgh; Central Indiana; Pittsburgh, Chartiers & Youghiogheny; and Monongahela may be included in system No. 1, New York Central, which controls one half the stock, the Pennsylvania controlling the other half.

SYSTEM NO. 3—BALTIMORE & OHIO

Baltimore & Ohio.
- Sandy Valley & Elkhorn.
- Staten Island Rapid Transit.

Reading system, comprising the Philadelphia & Reading, Central Railroad of New Jersey, and various others.
Cincinnati, Indianapolis & Western.
Chicago, Indianapolis & Louisville.
New York, New Haven & Hartford.
- Central New England.

Lehigh & New England.
Lehigh & Hudson.

NOTE.—The Baltimore & Ohio Chicago Terminal is reserved for consideration in connection with terminal situations.

The New York, New Haven & Hartford; Central New England; Lehigh & New England; and Lehigh & Hudson may be included in system No. 7, New England, or system No. 7a, New England-Great Lakes.

SYSTEM NO. 4—ERIE

Erie.
- Chicago & Erie.
- New Jersey & New York.
- New York, Susquehanna & Western.

Delaware & Hudson.
Delaware, Lackawanna & Western.
Ulster & Delaware.
Bessemer & Lake Erie.
Buffalo & Susquehanna.
Pittsburg & Shawmut.
Pittsburg, Shawmut & Northern.
Lorain, Ashland & Southern.
Wabash lines east of the Missouri River.

NOTES.—Professor Ripley recommends including the Lehigh Valley in this system; but in this tentative plan that carrier is proposed as a main stem for system No. 5, Nickel Plate-Lehigh Valley.

The Delaware & Hudson, Delaware, Lackawanna & Western, Ulster & Delaware, Pittsburg & Shawmut, and Pittsburg, Shawmut & Northern may be included in system No. 7a, New England-Great Lakes.

The Bessemer & Lake Erie may be included in system No. 5, Nickel Plate-Lehigh Valley.

The Lorain, Ashland & Southern may be included in system No. 2, Pennsylvania.

SYSTEM NO. 5—NICKEL PLATE-LEHIGH VALLEY

Lehigh Valley.
New York, Chicago & St. Louis.
Toledo, St. Louis & Western.
Detroit & Tolido Shore Line.
Lake Erie & Western.
Wheeling & Lake Erie.
Pittsburgh & West Virginia.
Bessemer & Lake Erie.

NOTES.—Professor Ripley recommends the Lackawanna as main stem in this system. In this tentative plan it is replaced for that purpose by the Lehigh Valley, and made available for either system No. 7a, New England-Great Lakes, or system No. 4, Erie. He also includes the Buffalo, Rochester & Pittsburgh and Wheeling & Lake Erie in this system.

The Bessemer & Lake Erie may be included in system No. 4, Erie.

SYSTEM NO. 6—PERE MARQUETTE

Pere Marquette.
Detroit & Mackinac.
Ann Arbor.
Detroit, Toledo & Ironton.
Boyne City, Gaylord & Alpena.

NOTE.—The last-named road is a Class II road not specifically covered by Professor Ripley's report.

SYSTEM NO. 7—NEW ENGLAND

New York, New Haven & Hartford.
- New York, Ontario & Western.
- Central New England.

Boston & Maine.
Maine Central.
Bangor & Aroostook.
Lehigh & Hudson River.
Lehigh & New England.

NOTES.—Professor Ripley recommends inclusion of the New York, Ontario & Western in system No. 4, Erie.

The Lehigh & Hudson River is not included in any system under Professor Ripley's report, but is left as a "bridge line."

SYSTEM NO. 7a—NEW ENGLAND-GREAT LAKES

Same as system No. 7 with addition of the following, which otherwise with the exception of the Buffalo, Rochester & Pittsburgh may be included in system No. 4, Erie. That carrier may be included in system No. 5, Nickel Plate-Lehigh Valley.
Delaware & Hudson.
Ulster & Delaware.
Delaware, Lackawanna & Western.
Buffalo, Rochester & Pittsburgh.
Pittsburg & Shawmut.
Pittsburg, Shawmut & Northern.

NOTE.—The addition of these lines has not been recommended by Professor Ripley.

System No. 8—Chesapeake & Ohio

Chesapeake & Ohio.
    Hocking Valley.
Virginian.

Note.—Professor Ripley recommends consolidation of the Virginian with the Norfolk & Western, Toledo & Ohio Central, and Kanawha & Michigan, in order to afford a western outlet for coal originating on the Virginian. This apparently would involve upgrade eastbound haul of westbound coal to the vicinity of Roanoke, unless there be new construction near Gauley Bridge, W. Va. The Virginian's present outlet to the West is via Deepwater, W. Va. and the Chesapeake & Ohio.

System No. 9—Norfolk & Western

Norfolk & Western.
Toledo & Ohio Central.
    Zanesville & Western.
    Kanawha & Michigan.
    Kanawha & West Virginia.

Note.—From the Norfolk & Western is excepted the branch from Roanoke to Winston-Salem, which may be included in system No. 11, Atlantic Coast Line-Louisville & Nashville and the branch from Lynchburg to Durham which may be included in system No. 12, Illinois Central-Seaboard.

System No. 10—Southern

Southern.
    Alabama Great Southern.
    Georgia, Southern & Florida.
    Mobile & Ohio.
    Southern Railway in Mississippi.
    Northern Alabama.
    Cincinnati, New Orleans & Texas Pacific.
New Orleans Great Northern.
Alabama & Vicksburg.

Note.—Professor Ripley recommends inclusion of the Georgia Southern & Florida branch from Valdosta, Ga., to Palatka, Fla., in the Seaboard system.

System No. 11—Atlantic Coast Line-Louisville & Nashville

Atlantic Coast Line.
    Atlanta & West Point.
    Charleston & Western Carolina.
    Louisville & Nashville.
        Nashville, Chattanooga & St. Louis.
        Louisville, Henderson & St. Louis.
Western Railway of Alabama.
Richmond, Fredericksburg & Potomac.
Norfolk Southern.
Atlanta, Birmingham & Atlantic.
Winston-Salem Southbound.
Roanoke to Winston-Salem branch of Norfolk & Western.
Florida East Coast.
Carolina, Clinchfield & Ohio.

Georgia & Florida.
Gulf, Mobile & Northern.
Mississippi Central.

Notes.—Professor Ripley recommends that the Richmond, Fredericksburg & Potomac and Florida East Coast retain their present status without inclusion in any system.

The Carolina, Clinchfield & Ohio may be included in system No. 12, Illinois Central-Seaboard. Professor Ripley recommends inclusion in system No. 10, Southern.

The Gulf, Mobile & Northern and Mississippi Central are not specifically included in any system under Professor Ripley's report.

System No. 12—Illinois Central-Seaboard

Illinois Central.
    Yazoo & Mississippi Valley.
    Central of Georgia.
Seaboard Air Line.
Lynchburg, Va., to Durham, N. C., branch of Norfolk & Western.
Gulf & Ship Island.
Tennessee Central.
Carolina, Clinchfield & Ohio.

Notes.—Professor Ripley recommends that a separate system be built around the Seaboard Air Line.

The Gulf & Ship Island is not included in any system by Professor Ripley.

The Carolina, Clinchfield & Ohio may be included in system No. 11, Atlantic Coast Line-Louisville & Nashville.

System No. 13—Union Pacific-North Western

Union Pacific.
    St. Joseph & Grand Island.
    Oregon Short Line.
    Oregon-Washington Railroad & Navigation Co.
    Los Angeles & Salt Lake.
Chicago & North Western.
    Chicago, St. Paul, Minneapolis & Omaha.
Lake Superior & Ishpeming.
Wabash lines west of the Missouri River.

Notes.—Professor Ripley recommends inclusion of the Central Pacific in this system.

The Lake Superior & Ishpeming is not specifically included in any system by Professor Ripley.

System No. 14—Burlington-Northern Pacific

Chicago, Burlington & Quincy.
Northern Pacific.
Chicago Great Western.
Minneapolis & St. Louis.
Spokane, Portland & Seattle.

Notes.—From the Chicago, Burlington & Quincy are excepted the Colorado & Southern and Fort Worth & Denver City, which may be included in system No. 16, Santa Fe Professor Ripley recommends that they be included in system No. 19, Chicago-Missouri Pacific.

Professor Ripley recommends extension of this system to the Pacific coast by including the Denver & Rio Grande and the Western Pacific. He also recommends redistribution of portions of the Minneapolis & St. Louis and Chicago Great Western.

The Spokane, Portland & Seattle may be included in system No. 15, Milwaukee-Great Northern.

SYSTEM NO. 15—MILWAUKEE-GREAT NORTHERN

Chicago, Milwaukee & St. Paul.
Great Northern.
Chicago, Terre Haute & Southeastern.
Duluth & Iron Range.
Duluth, Missage & Northern.
Green Bay & Western.
Spokane, Portland & Seattle.
Butte, Anaconda & Pacific.

NOTES.—The Green Bay & Western and Butte, Anaconda & Pacific are not included in any system under Professor Ripley's report.

The Spokane, Portland & Seattle may be included in system No. 14, Burlington-Northern Pacific.

Professor Ripley recommends that the eastern half of the Chicago & Eastern Illinois be included in this system.

SYSTEM NO. 16—SANTA FE

Atchison, Topeka & Santa Fe.
Gulf, Colorado & Santa Fe.
Colorado & Southern.
Fort Worth & Denver City.
Denver & Rio Grande.
Western Pacific.
Utah Railway.
Northwestern Pacific.
Nevada Northern.

NOTES.—Professor Ripley recommends inclusion of the Colorado & Southern and the Fort Worth & Denver City in the Missouri Pacific system. He also recommends inclusion of a part of the Gulf Coast Lines in the above system.

Professor Ripley recommends that the Northwestern Pacific retain its present status.

The Nevada Northern is not specifically included in any system by Professor Ripley. It may be included in system No. 17, Southern Pacific-Rock Island.

SYSTEM NO. 17—SOUTHERN PACIFIC-ROCK ISLAND

Southern Pacific Company.
Nevada Northern.
Chicago, Rock Island & Pacific.
Chicago, Rock Island & Gulf.
Arizona & New Mexico.
El Paso & Southwestern.
San Antonio & Aransas Pass.
Trinity & Brazos Valley.
Midland Valley.
Vicksburg, Shreveport & Pacific.
Chicago, Peoria & St. Louis.

NOTES.—The Nevada Northern may be included in system No. 16, Santa Fe.

The Arizona & New Mexico and Chicago, Peoria & St. Louis are not specifically included in any system by Professor Ripley

The Trinity & Brazos Valley may be included in system No. 18, Frisco-Katy-Cotton Belt. So recommended by Professor Ripley.

Professor Ripley recommends redistribution of portions of the carriers included by us in this system.

SYSTEM NO. 18—FRISCO-KATY-COTTON BELT

St. Louis–San Francisco.
St. Louis Southwestern.
Louisiana Railway & Navigation Co.
Chicago & Alton.
Missouri, Kansas & Texas.
Trinity & Brazos Valley.
San Antonio, Uvalde & Gulf.

NOTES.—The Trinity & Brazos Valley may be included in system No. 17, Southern Pacific-Rock Island.

Professor Ripley recommends inclusion of the San Antonio, Uvalde & Gulf in either system No. 17, Southern Pacific-Rock Island, or in a Southwestern Gulf System.

Professor Ripley recommends redistribution of portions of the carriers included by us in this system.

SYSTEM NO. 19—CHICAGO-MISSOURI PACIFIC

Chicago & Eastern Illinois.
Missouri Pacific.
Kansas City Southern.
Kansas City, Mexico & Orient.
Kansas, Oklahoma & Gulf.
Texas & Pacific.
Fort Smith & Western.
Louisiana & Arkansas.
Gulf Coast Lines.
International & Great Northern.

NOTE.—Professor Ripley recommends redistribution of portions of the carriers included by us in this system.

Certain lines, such as the Minneapolis, St. Paul & Sault Ste. Marie and the Central Vermont, which are controlled by Canadian carriers, have not been specifically included in this tentative plan, because these lines form parts of through transcontinental Canadian systems in active competition with systems above set forth.

The carriers included in this tentative plan comprise most of the Class I steam railroads, but very few of those in Class II and Class III. Those not so included, whether industrial common carries, terminal carriers, interurban electric railways operated as a part of general steam railroad systems of transportation or engaged in the general transportation of freight, "short lines," or others, will be considered at the hearings to be hereafter assigned so that in the plan to be ultimately adopted provision can be made for their inclusion in the systems.

We have not specifically mentioned water carriers. Where these carriers are now controlled by carriers by rail they will be considered as being included tentatively in the systems in which the controlling rail carrier has been included.

Mr. BURTNESS. Just one more question. The recent proposed Nickel Plate merger, as it has been sometimes called, has been referred to several times, and as a matter of curiosity I am wondering

under just what provision of the transportation act the application was made for that merger; whether it was under paragraph 2 of section 5 or not?

Doctor DUNCAN. That, of course, is a legal question. I understood that the case came up before the commission for approval of the general plan under paragraph 2.

Mr. BURTNESS. Was it simply a plan for acquisition of the stock of the other corporations?

Doctor DUNCAN. Yes, it was under paragraph 2 of section 5 that they made their application; but the unification—and they are very careful to call it unification, not consolidation—took place under State laws, you understand.

Mr. BURTNESS. Was the unification or consolidation that was proposed, in a general way, in harmony with the so-called Ripley plan or not?

Doctor DUNCAN. No; it disrupted every plan that I know of. The commission, as you will remember, approved it as of the properties going together; they disapproved it as to the terms that were offered.

Mr. BURTNESS. Yes; I understand that, but I did not know whether or not it was in harmony with the tentative plan that had been put out by the commission.

Doctor DUNCAN. No, sir. I do not know of any plan put out by the commission or Professor Ripley that did not leave the coal roads, the Norfolk & Western, and the C. & O. independent. The C. & O. and the Pere Marquette were not to be brought into this other system, and the Michigan roads also were to be consolidated separately, according to this plan.

Mr. NEWTON. Mr. Duncan, I agree with the proposition that in a great transportation system such as we have in this country it does not rest with any master mind or group of master minds to sit down in an office and prepare a grouping of railways into a certain number of systems. That may be theoretically all right, but those things have to work themselves out along natural lines. Now, getting back to this Nickel Plate-Van Sweringen merger, I heard part of the final arguments in that case. I gathered from those arguments that one of the chief objections to the plan of consolidation proposed was a manipulation of the stock in the consolidated company so as to inflate the values; that is, the proponents of the plan would capitalize the future earnings of the company by reason of this consolidation. That is a common practice, is it not, and has been in the past; to go to work and buy up several lines of railway, form a new one, and then sell stock at a sum far in excess of what the initial value of each component part was?

Doctor DUNCAN. Of course there have been instances of that. I do not think it is characteristic of railroad organization. But it can not be done now without the approval of the commission.

Mr. NEWTON. No; and of course it ought not to be done. It ought not to be possible. Now, just what safeguards will there be in this particular bill, other than what is in existing law, to prevent that very thing from happening?

Doctor DUNCAN. I do not think there will be any. I do not see that there needs to be any.

Mr. NEWTON. Do you think that under the provisions of existing law, then, there is ample protection for the public?

Doctor DUNCAN. I do; absolutely.

Mr. NEWTON. That would be under the transportation act, with the provisions there in reference to the issuance of securities?

Doctor DUNCAN. Yes, sir.

Mr. NEWTON. You think that would amply protect the public?

Doctor DUNCAN. I do. There is absolute control by the commission and absolute publicity as to what is to be done.

Mr. NEWTON. Was the decision of the commission unanimous on that question of the Nickel Plate? I have forgotten.

Doctor DUNCAN. No; it was not unanimous; and the positions taken by various commissioners were different. Personally, I thought that Commissioner Lewis was right in that, while he says that he agreed with the majority, he thought that the commission ought in the decision to tell what would be acceptable to them. Otherwise the majority left it open for them to try again.

Mr. BURTNESS. Were not the opinions almost as many and conflicting as they were in the Pullman surcharge case?

Doctor DUNCAN. Not quite—but very nearly.

Mr. NEWTON. I think they were about like some of the other decisions that we have been getting from the commission. They do not seem to agree among themselves.

But they disagreed on the very question of the protection of the public in reference to that plan of financing, did they not?

Doctor DUNCAN. They were not in full agreement on that; no.

Mr. NEWTON. That is the thought that I had; that if the commission was in disagreement on that it may be necessary to strengthen the law in that respect.

Doctor DUNCAN. Mr. Newton, I might say that there might also be something said on the other side; that it is not such a great danger to the public if there is close disagreement. Personally I do not feel that there was in the proposition any danger to the public at all. I never could see any inflation in it, myself. So, when you get a disagreement, there may be something said on the other side.

Mr. NEWTON. What I have in mind is this: Out in our part of the country we read very frequently about some merger of corporations, a reorganization, and the selling of stock at a greatly increased capitalization, and a commission of several millions of dollars paid to some New York concern for promoting it—all of which the public pays; and I do not want to vote for anything that is going to countenance or further that sort of a scheme, because it does not produce anything.

Doctor DUNCAN. I understand.

Mr. NEWTON. I think it was one of the newer commissioners, Commissioner Woodlock, who announced a doctrine here a short time ago—I am under the impression he wrote the opinion, but it may have been a dissenting opinion or possibly a separate concurring opinion—in which he expressed the thought that in the issuance of securities resort should be had more and more to the issuance of stock rather than to the creating of new bond issues.

Doctor DUNCAN. In the case of the C. & O.?

Mr. NEWTON. Yes. What is your judgment as to that?

Doctor DUNCAN. Of course, I think it is perfectly obvious that you can not go on putting a heavier and heavier burden on the railroads

of fixed interest charges. Sometime you are going to come to a position where it will be altogether too heavy, and surely we ought to restore the credit of the railroads to such an extent that they can sell stock. It certainly is not a desirable position from anybody's point of view, that of the railroad owners or the public, to have the great transportation system of the country in such a condition that they can not go into the money market of the country and sell stock.

Mr. NEWTON. How long has it been since there has been that resort exclusively to bonds for the purpose of raising money for additions and betterments?

Doctor DUNCAN. I do not think there has been a substantial issue of new stock by railroads since 1907. There have been conversions from bonds into stock. There have been some issues of preferred stock by certain strong roads, but a great issue of new stock in a railroad system, I think, has not taken place since 1907.

Mr. NEWTON. That was about the time of the passage of the Hepburn Act?

Doctor DUNCAN. Yes; about that time.

Mr. NEWTON. Now, that is bad, of course. You do not attribute that to the passage of the Hepburn law, however?

Doctor DUNCAN. Well, I think the roads suffered from restrictive legislation for a good long time, and perhaps from a very severe administration of the interstate commerce act.

Mr. NEWTON. But while that possibly may have entered into it here and there, is not that due to some of the practices of the carriers themselves?

Doctor DUNCAN. Undoubtedly they contributed.

Mr. NEWTON. Take the New Haven, for instance. Who wants to buy railroad stock after they read the report of the Interstate Commerce Commission on the New Haven?

Doctor DUNCAN. Quite true. They were contributory.

Mr. NEWTON. So it seems to me that it can not be attributed to legislation so much as to the practices that led to legislation.

Now, suppose that the general principles of this bill are put into law, and a number of these consolidations are put into effect along natural lines, and are approved by the commission. What effect would it have, in your judgment, upon that situation that we were discussing with reference to the question of credit and the obtaining of money for additions and betterments, and so on?

Doctor DUNCAN. In my opinion, as I tried to say, just as in the case of the weak lines, the sound credit for the entire transportation system will not be fully met by consolidation, but I can see how it might be helpful, just as I illustrated in the case of the original Nickel Plate, where you had three roads that doubtless would have been called weak at the time they came together. Their credit standing now, all around, is much better. Now, that sort of thing can take place, and you can have a transfer of the credit standing of a strong road to any lines taken over by the strong road. But I do not anticipate, myself, that consolidation would be a panacea for the financial problems of the carriers.

Mr. NEWTON. In reference to the situation out in the Northwest, we have a little different problem there in that our lines of railway cover a greater mileage in one direction, and there is ultimately a point reached by a system, where, if it gets any larger, it gets out of

hand and can not be economically managed. What would be the situation in reference to a consolidation with those large transcontinental lines in the northern part of the Western United States? Where could they consolidate without consolidating among themselves, and help themselves in any way?

Doctor DUNCAN. Of course, as far as I know, they could consolidate only among themselves. I do not think that I am at all in a position to say whether, by a given consolidation, the total miles operated would be too many or not. You have a very extensive system in the Southern Pacific, and I think it is operated as effectively as many smaller lines. Of course, that depends on the people in charge.

Mr. NEWTON. Was not one of the plans that have been before the commission a plan for the consolidation of the Northern Pacific, the Great Northern, and the Burlington?

Doctor DUNCAN. I think so; yes, sir.

Mr. NEWTON. That has not yet been acted upon by the commission, has it?

Mr. DUNCAN. No, sir.

Mr. NEWTON. Of course, that would be consolidating what were originally highly competitive lines of railway?

Doctor DUNCAN. Yes; but I do not understand that it would destroy competition in that region.

Mr. NEWTON. You think that there would still be competition in service between the Great Northern and the Northern Pacific?

Doctor DUNCAN. I am not so sure that there would between those roads; but they do not take in all the railroads serving those particular territories.

Mr. NEWTON. Well, you would only have left the Milwaukee, which runs considerably farther south in the fore part of its trip westward; then you would have the Soo, and that, of course, is in some States competitive. But it has always seemed to me that a consolidation of that character would really prevent a great deal of competition, even on the coast-to-coast business. It certainly would between divisional points.

Doctor DUNCAN. If I may say so, Mr. Newton, the point I made was that I do not think I am in a position at this time to pass upon whether or not a given consolidation ought to take place or ought not to take place.

Mr. NEWTON. Oh, no; I understand that.

Doctor DUNCAN. But it is an individual problem in each case, and somewhere, somehow, those who have to deal with those roads should have an opportunity to plead their cause, with an opportunity also, if they can demonstrate advantages, to let them realize them.

Mr. LEA. The other day, in discussing the weak roads, you suggested there are a considerable number of these roads that have potential possibilities of developing freight that might take them out of the weak-road class. Have you studied the question to what extent increasing population and production and development of the country will eventually take these roads out of that class?

Doctor DUNCAN. I have made no such study. I do not know how one could make such a study. But all I meant to say in regard to weak roads was that it was very difficult to tell what is a weak road, and that to base your judgment on one year would lead you far astray.

Or, as I might say, the lame duck of to-day may be transformed into the golden goose of to-morrow; and it might go the other way.

Mr. LEA. Yes; but to the extent that they have potential resources of traffic we do not need to worry about that, do we?

Doctor DUNCAN. If they have potential opportunities for traffic, and the way is open to the consolidation, that particular road will not have any difficulty in consolidating.

Mr. SHALLENBERGER. Doctor Duncan, I gathered from both your statement and Judge Lovett's that we can not expect very much economy or reduction in charges to the public as a result of these consolidations of weak lines with the stronger lines.

Doctor DUNCAN. Let me say, Mr. Shallenberger, so far as I am concerned personally, I really do not know. But this is the point that I want to make. Here are practical railroad men who feel convinced that they can secure some savings and economies, and here are others who do not see any sources for substantial economies; and I wanted the opportunity open for these managers to demonstrate whether or not they can secure such economies. That is the point.

Mr. SHALLENBERGER. Judge Lovett gave us a specific example here, and that railroad, I think, is showing results in economy and careful and efficient management equal to those of any road in the country. They took over finally one of these so-called weak roads, operated it for three years, and lost $30,000. Therefore, so far as the possibility of savings or reductions in expenditures is concerned, he did not, I gathered, believe that much could be expected. If that is the case, would not the result be, if we absorbed all of these so-called weak, nonpaying lines into the strong lines, that they would be still eating away like ulcers into the transportation system of the country just the same, no matter whether they were associated with the strong lines or whether they were allowed to operate by themselves? Judge Lovett's statement was that there is no charge that those roads are not being efficiently and well managed, but that it is the situation they are in which prevents the possibility of making them pay. Was not that, in substance, his position?

Doctor DUNCAN. As to that particular road, yes; that was his position.

Mr. SHALLENBERGER. He stated, as I understood him, that there was no charge that these short lines are not being well managed.

Doctor DUNCAN. That is true.

Mr. SHALLENBERGER. But that their condition is such that it can not be done.

Doctor DUNCAN. Yes.

Mr. SHALLENBERGER. Now, the basis of this bill, in its declaration of policy, as I gather, is that this power is to be granted to the Interstate Commerce Commission "in order that an adequate and efficient transportation service may be maintained in the United States and necessary weak and short lines be preserved, to authorize and encourage the unification, through any method specified in sections 203, 204, and 205 of this title, of the property of carriers into a number of strong and efficient and well-balanced systems." Now, we start out in this bill to provide a way to unite these weak lines with strong lines, but we also provide a way to combine the strong lines together. We not only provide a method for taking care of the weak lines, but we also provide for uniting all the lines of the United States into such number of systems as the Interstate Commerce Commission may decide upon; is that not true?

Doctor DUNCAN. Under the transportation act, as it now exists, that is certainly true; because a plan is to be set up, and all the railroad properties are to be consolidated into a limited number, regardless of prosperity.

Mr. SHALLENBERGER. Is not this a thing that is likely to occur? We passed section 15–a as a means whereby we hoped to enable these weak lines to be built up into stronger lines by increasing rates; but the result clearly was, as it turned out, and as is admitted, I think, that instead of being able to help the weak line we helped the strong lines tremendously by that provision. We attempted to correct that in the recapture clause, but it is admitted that in practice—so the Interstate Commerce Commission has told me—it does not function; it does not work. So, in attempting to help these weak lines by increasing rates, we did the opposite thing; we helped the strong lines that did not need it. Now, in this bill, in attempting to save the weak lines by consolidation, we are providing the means by which we are going to consolidate these strong lines into a number of monopolistic corporations. Is not that possible in this bill?

Doctor DUNCAN. I think it is possible in this bill for two or more strong carriers to get together if they can get the approval of the commission. But may I also add that I took a list of 46 weak roads, with their record of 1922, and showed how thay had improved since that time.

Mr. SHALLENBERGER. Let me follow up the line of thought that Mr. Newton brought to your attention, that the policy of consolidation in the past has been to bring these different corporations together for the purpose of making money in the sale of securities issued at their consolidation. Can you point to a single one of these consolidations that are well known that was brought about by the promoters for the purpose of economy or for the purpose of effecting those things in the management of the railroad that were essential? Is it not a matter of absolute knowledge that the Harriman consolidations, the Nickel Plate consolidations, the New Haven consolidations, the Rock Island consolidations, the Frisco consolidations, and all those great consolidations that have resulted in uniting these railroads, were every time brought about by the banking corporations of the country who deal in those particular securities, and that they were really consolidations by banking interests rather than by the managements of the railroads? Is not that the history of the thing so far?

Doctor DUNCAN. That is only a very small part of the history, and I attempted to point out to you that those combinations against which public opinion turns took place in the period at the beginning of the present century, with the whole idea of large-scale production everywhere and strong financial institutions to help them out.

Mr. SHALLENBERGER. Pardon me, Doctor. These things that I have mentioned have all taken place since the passage of the antitrust act and since the passage of the interstate commerce act.

Doctor DUNCAN. Yes, sir; the Sherman antitrust law of 1890 and the interstate commerce act of 1887.

Mr. SHALLENBERGER. Yes.

Doctor DUNCAN. Now, I attempted, in tracing briefly the history of this development, to show that just at the beginning of the present century this mania for consolidation and large-scale production struck the railroads, along with all other industries; but that preceding that, and many years prior to that, these systems like the Pennsylvania and the New York Central were brought together for purely operating purposes, and that it had nothing to do with promotion by bankers for profit. That is what I intended to show.

Mr. SHALLENBERGER. You refer to the consolidations prior to 1887?

Doctor DUNCAN. Yes, sir; prior to 1887, when many of them took place.

Mr. SHALLENBERGER. Do not you know, as an economist, that the banking corporations of this country in 1887 drew a dead line and stopped all of the building of railroads and the further extension of them at one stroke?

Doctor DUNCAN. I do not know any such thing as that; no, sir.

Mr. SHALLENBERGER. Well, I think we know it in the West; because the lines that were already being extended across that country by the Union Pacific, the C., B. & Q., the Missouri Pacific, and all the other great railroad lines were being built when Mr. Morgan, in 1887, through a community of interest of the bankers in New York, who were furnishing the funds to build those railroads, ordered them stopped. Those railroad lines are yet pointing right out into the prairies; they have never been extended; they have never been touched since 1887. We have had no increase of railroad lines in the United States since they drew that dead line, and up to that time expansion was constant and tremendous.

Doctor DUNCAN. I beg your pardon, Governor. That is not according to historical fact; because you will find a great decrease in the extension of the railroad systems during the nineties, a period of very severe depression, which many of us can remember.

Mr. SHALLENBERGER. I am referring to the period prior to 1887. It ended prior to 1890.

Doctor DUNCAN. I can show the extension year by year of railroad systems during that period. I do not know any facts to substantiate the general statement you have made.

Mr. SHALLENBERGER. The point that I wanted to get your judgment on, because you have studied it, is if the experience of the country has not proved that the banking interests and those who deal in their stocks and bonds and mortgages, have been the real, controlling factors in the building of railroads and the controlling factors in the consolidation of railroads, rather than these economies which we are discussing here?

Doctor DUNCAN. I do not think so. That is not my opinion.

Mr. SHALLENBERGER. You do not think that this bill now is really to make possible consolidations of railroad systems whereby money can be made in commissions on issues of stocks and bonds?

Doctor DUNCAN. If I thought that under this bill you could have any substantial exploitation of the railroads by speculators and others I would be against it. I do not believe you can.

Mr. SHALLENBERGER. What is the protection, the Interstate Commerce Commission?

Doctor DUNCAN. You have your commission that approves every issue of stock and the terms upon which it shall be issued.

Mr. SHALLENBERGER. Have you read the speech of President Coolidge that he delivered at Williamsburg?

Doctor DUNCAN. I have not, I am sorry to say.

Mr. SHALLENBERGER. Well, the Interstate Commerce Commission is a bureau or arm of the legislative branch of the Government, whereby we seek to empower them with duties to carry out what we believe are the interests of the public.

Doctor DUNCAN. Yes.

Mr. SHALLENBERGER. In that speech the President said in substance that a bureau is a governmental agency with practically unlimited powers and with little or no responsibility. Now, if we turn over to the Interstate Commerce Commission this power, which I think we have done, and they are not responsible or answerable to anyone after we give it to them, how is the public to be sure that they are going to be protected in that sort of a proposition? Do you think it is good public policy for this Congress to turn over that sort of power to a bureau that is not answerable to us or to the public?

Doctor DUNCAN. Of course, as I understand it, the commission is always answerable to you, because you create it.

Mr. SHALLENBERGER. But after they are appointed we have no power over them.

Doctor DUNCAN. You have no power to determine what their decision will be.

Mr. SHALLENBERGER. No.

Doctor DUNCAN. That is possibly true. If you can devise a better scheme the public probably would be willing to accept it, but unless you are going to stop this business now by absolute law I should think you would have to select some agency through which to administer your laws.

Mr. SHALLENBERGER. What I am trying to get at is that it seems to me from the testimony, so far as we have heard yours and others, that we are going to be assured no economic benefit to the public, but we are going to turn over to the Interstate Commerce Commission tremendous power and authority here that may possibly result in disaster to the public, and after we have granted it we are not sure we are going to get any benefit from it.

Doctor DUNCAN. Well, Governor Shallenberger, may I say again that I spoke merely on the basis that since Congress has adopted a theory of consolidation I thought these were the things which Congress should have in mind in making such consolidations possible? I did not address myself at any time, I think, to the original policy as to whether or not you should have consolidation, but if it is the policy then these are the requirements. That is what I meant to say.

Mr. SHALLENBERGER. Well, I would like to ask one more question, and then I am done. Is it your judgment that if we grant the power to the Interstate Commerce Commission, to make possible these consolidations, that there will not be consolidations of strong lines, having nothing whatever to do with the weak lines, but that the consolidation will rather be such as this one contemplated by Van Sweringen and one referred to in the Northwest, involving the great

lines? Do you not think the real consolidation is going to be in those great companies rather than these weak lines we are talking so much about?

Doctor DUNCAN. I presume that that will be tried at least. I think that those are the people who understand what they would like to do. You have a check on them all the time, because here is the power to say to them: "You can consolidate, and these lines must be included; otherwise you can not consolidate."

Mr. SHALLENBERGER. You think then the Interstate Commerce Commission could assume that authority to, in a direct way, compel them to take over the little lines or would not permit them to consolidate the big ones? Is that the idea?

Doctor DUNCAN. I should think so.

The CHAIRMAN. The committee will stand adjourned to meet at the call of the chairman some time next week, and I want to have the Interstate Commerce Commissioners here at that time.

(Whereupon, at 12.15 o'clock p. m., the committee adjourned to meet at the call of the chairman.)

RAILROAD CONSOLIDATION

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Tuesday, May 25, 1926.

The committee met at 10 o'clock a. m., Hon. James S. Parker (chairman) presiding.

The CHAIRMAN. The committee will please come to order.

Mr. THOM. Mr. Chairman and gentleman: May I have the privilege of interrupting Doctor Duncan's statement in order that Judge Lovett may make his statement, so that he may get away, with the understanding that Doctor Duncan's statement will be printed together? Judge Lovett has to go away and if you will permit me that privilege, I shall be very much pleased.

STATEMENT OF ROBERT S. LOVETT, CHAIRMAN BOARD OF DIRECTORS OF THE UNION PACIFIC RAILROAD CO.

Mr. LOVETT. Mr. Chairman and gentlemen of the committee, at this time I am chairman of the board of directors of the Union Pacific Railroad Co. and of the various railroad corporations constituting what is known as the Union Pacific system. I am specially in charge of the direction of the representation of the interests of that company in all matters of consolidation and railroad valuation.

Prior to January 1, 1924, I was chairman of the executive committee, and chief executive of the Union Pacific system, and had been since 1909, and chief executive of the Southern Pacific system from 1909 until 1913.

Prior to 1909 I had been general counsel of both the Union Pacific and the Southern Pacific systems and a director and member of the executive committee of each of said systems, back to 1904.

Prior to 1904 I had been counsel for the Southern Pacific lines in Texas and a director of most of the Texas companies of the Southern Pacific system. I have been continuously in the railroad business as counsel or as executive, back, I think, to 1884.

I shall be very glad, of course, to answer as far as I can, all questions of the committee, either at the conclusion or during the progress of my statement.

The CHAIRMAN. Those will come at the conclusion, Judge.

Mr. LOVETT. Thank you, sir.

I shall take it for granted that it is the settled policy of the Government at this time to promote railroad consolidations under certain conditions when approved by the Interstate Commerce Commission. This is manifest from the existing law, and the reasons bearing upon

the policy were so well stated by Doctor Duncan, who has just preceded me, that I shall not take the time of the committee to pursue that question. But further legislation by Congress, such as is substantially embodied in the bill now before this committee (H. R. 11212), is necessary if that policy is to be made effective. The existing law was, for some reason which I have never understood, designed ultimately to bring about "consolidation" in the technical legal sense of that term—that is to say, the merging of two or more corporations under an arrangement sanctioned by law which would in legal effect simultaneously extinguish the existing corporations and bring into existence in their stead a new corporation owning all the properties and owing all the debts of the merging corporations. Substantially, the same results may be accomplished, so far as relates to the ownership or operation of the property, by other methods. The existing law, however, prohibits such consolidations or any arrangement effecting substantially the same results until the Interstate Commerce Commission shall have prepared and promulgated a plan for dividing all the railroads in the continental United States into a limited number of systems; and it enjoins upon the commission the duty of working out and promulgating such plan in conformity with the directions and requirements prescribed by the law. In the meantime the existing law provides for what its authors apparently conceive to be convenient and useful steps to a consolidation in the legal sense, by means of control through the purchase of stock, or lease, or other means, not amounting to a technical consolidation, subject to the approval of the Interstate Commerce Commission; and this method has been extensively utilized and has, I believe, worked in the public interest.

But until the commission promulgates a plan arbitrarily dividing all the railroads of the United States into a limited number of systems, or until the existing law is changed, the title to an existing group or system of railroads, however desirable and unobjectionable their consolidation may be, can not be vested in a single corporation under the existing law. Probably one of such railroad companies, the principal one we may assume, can not purchase the railroad and other properties of another, thus merging it into its own system, for that might be in effect a consolidation prohibited by subdivision (5) of section 5 of the act until the commission shall have established and promulgated a plan for all the railroads.

This is one reason why there have been so few—indeed so far as my knowledge goes there have been no "consolidations" or even mergers by purchase under the provisions of this act since it was passed over six years ago for the purpose of bringing about the consolidation of railroad properties. If there have been any I think it would be found that they were effected under State laws. The only accomplishments of the consolidation or unification provision of the transportation act of 1920 thus far have been the authorization of control through stock purchases and approval of leases. The commission has appealed to Congress to relieve it of the impossible task of dividing all the railroads in the country into a limited number of systems and I will not stop at this point to dwell upon the necessity for such relief or the disaster which I believe would result from such an arbitrary allocation of all the railroads of the United States to particular

systems in any plan of consolidation. My purpose now is to point out another and controlling reason why there must be further legislation by Congress if its policy with respect to railroad consolidations is to be effective, and that is this:

It is elementary law, recognized by many decisions of the United States Supreme Court, that before one railroad company can consolidate with or purchase or lease the railroad of another there must be in both companies clear and unmistakable power through charter provisions or by statutory law for such consolidation, purchase, or lease. Many States have granted this power to railroads operating lines within their territorial limits; some have granted the power with restrictions and conditions; others have withheld it altogether; still others have absolutely prohibited it, especially with respect to competing lines. Even the States granting the authority vary considerably in the terms and conditions of the grant. All of the large systems even as they exist to-day traverse more than one State, most of them traversing many States, and an enlargement of these systems as contemplated by the existing law would extend the operations of the enlarged systems into still more States. Now, if railroad companies must look to the States of their incorporation and the States in which the lines operated by them or to be acquired by them are situtated for this essential corporate power, they will find that where it exists at all it varies in terms and conditions and in no event operates beyond the limits of that particular State; in others it exists with perhaps impossible conditions; in still others it is nonexistent; and in some there are positive statutory and even constitutional prohibitions. This not only makes many large consolidations impossible, but where possible in many cases leaves such doubt or creates such conditions as to meet objections from counsel for bankers sufficient to prevent financing of securities or impair the price at which they can be sold. But whatever may be the present desire or policy of the States and State commissions with respect to the consolidation policy of the National Government, the fact is to my knowledge that there are several States which have constitutional provisions that prohibit the common control through consolidation, purchase, sale, lease, ownership of stock, or otherwise, of parallel or competing lines of railroad. The effect of this, of course, is not only to invalidate all State legislation if there be any undertaking to grant corporate power for such consolidation, sale, or lease, but to positively and directly prohibit the exercise of such power by corporations of that State or with respect to railroads operating in that State. The result would be that unless Congress acts the policy with respect to unification of the railroad properties of the United States will be ineffective in several great sections of the country and as to many corporations.

It is not sufficient in the face of such constitutional and statutory provisions prohibiting what is proposed to merely remove obstructions, such as the provision in the existing law striking down the antitrust laws and other restrictive laws. Affirmative legislation by Congress conferring upon all railroad companies engaged in interstate commerce all power requisite and appropriate to carry out the policy of unification declared by the National Government must be enacted if that policy is to govern and be accomplished. I doubt if

anyone at this date questions the power of Congress to so enact. I need do no more than say that by the commerce clause of the Constitution Congress is given complete power, consistent with due process of law, to regulate such commerce and especially all agencies for carrying on such commerce. No matter what that commerce may be or what the agencies may be, whether State corporations or others, Congress, as the Supreme Court has repeatedly held, can regulate the agencies whatever their character as well as the commerce itself. It utilized State railroad corporations in building the Pacific railroads. And this was sustained many years ago in a notable opinion by Justice Bradley in California *v.* Central Pacific Railroad (127 U. S. 1). And the interstate commerce act as it stands to-day unquestioned, affords striking evidence of the multiplication of requirements imposed by Congress on State corporations which were not dreamed of when Justice Bradley wrote that opinion. The authority of Congress is paramount, and wherever it conflicts with State authority, whether it be in the form of Constitution, statute, or administrative order, the congressional authority must prevail, even to the extent of congressional legislation regulating or fixing purely intra-State rates, as held by the Supreme Court in the comparatively recent case of Wisconsin *v.* Chicago, Burlington & Quincy Railroad (257 U. S. 567). But I need not pursue this point further because I do not believe that the proposition will be seriously questioned.

The bill now pending before the committee undertakes to exercise this obvious and necessary power of Congress to the extent of conferring upon the railroad corporations concerned the corporate power necessary to effect the consolidations, sales, leases, etc., authorized by the act to be made with the approval of the Interstate Commerce Commission. Without such legislation, or legislation to the same effect, by Congress the policy of Congress as declared in the existing law and by this bill will, to a large extent, be defeated. The only alternative to the legislation proposed in that respect by the pending bill if the policy of Congress with respect to consolidations is to be carried out would be Federal incorporation. Personally, I would prefer Federal incorporation so as to have all interstate carriers with exactly the same powers. But the result, so far as the policy with respect to consolidation and unification of railroads is concerned, can be just as effectually accomplished I must admit if Congress will exercise the power it possesses to utilize the State corporations for such purposes.

Passing now to other aspects of the proposed legislation which Mr. Thom has asked me to discuss, I will turn again to the provision of the existing law which requires the commission to divide all of the railroads in the continental United States into a limited number of systems for the purpose of consolidations. I have already pointed out that no consolidations and no arrangement amounting in effect to a consolidation can be effected until the commission completes that task and that the commission has not completed it, but is asking Congress to relieve it. It is not only impossible of performance with due regard for the facts of each situation and except in a most arbitrary manner, but if performed it would, in my judgment, be a most unwise method for dealing with this vastly important problem. The work done by Professor Ripley and the commission in the tentative plan

promulgated by the commission as a basis for suggestions and criticisms is a monument of industry and great ability and intelligence, but it scarcely touched the surface of the facts and of the interests, public and private, involved in the problem.

Many of the consolidations suggested probably would be effected if Congress would remove the obstacles existing under the present law and provided also the parties at interest are able to agree upon the terms of unification. Here comes to mind one of the greatest objections to any plan that contemplates any form of compulsory or enforced unification, namely, the encouragement it gives to speculators in the stock and other securities of what are termed the weak lines to believe that the Government will force the so-called strong lines to buy them out or take them over in some form greatly to their profit. In my judgment there will be few consolidations or unifications (for there should be none), that are grossly unfair to the stockholders of the so-called strong lines, that is to say, combinations which compel the strong lines to pay, either in securities or cash, more than the real value of the weak line absorbed. And that value will not be based upon the original cost of the line or upon any theoretical cost of reproduction, but upon its real value, including nuisance value which the line may have. Just here may I be permitted to say a word respecting the owners of the strong and weak lines. The days when a few rich men owned the railroads of this country are long since past. Rich men are interested in them as stockholders, but so are the poor. And to this fact I particularly direct your attention, namely, the earnings of the poor, the small investments, are in the stock of the dividend-paying roads, and not the weak roads. What I am about to state about the weak roads is based upon opinion rather than direct information, but I venture the opinion that an investigation will disclose that the stock of the non-dividend-paying roads is in nearly all cases held by a very few men who either acquired it as a speculative proposition and are holding with the hope of selling to the strong roads, or got stuck with it in some financial venture or enterprise, while the stock of the dividend-paying roads, especially the most dependable, is widely scattered among small holders, though I do not claim that the majority in amount is held by very small investors. When, therefore, a so-called strong road is required to absorb a so-called weak road at an excessive price it will amount, I predict, in nine cases out of ten, to the taking of money that belongs in considerable part to the small investor and paying it over to a small group of speculators. In this statement I am not criticizing those designated as speculators. It is a legitimate business and they are entitled to avail themselves of the Government's policy. But I am speaking for a great many small investors among the more than 50,000 different persons who own stock of the Union Pacific and other dividend-paying railroad companies who should not be overlooked in dealing with the consolidation problem.

As already pointed out a technical "consolidation" seems to be the goal of the existing law if indeed it is not the only method contemplated by it for the creation or extension of railroad systems to accomplish the benefits sought. Such consolidation was not the method adopted in creating the great railroad systems that exist to-day. If employed at all, I think it will be found in only a few

instances. Such systems almost without exception were built up gradually through the purchase of stock or by lease or by the purchase of the railroads or parts of railroads themselves. My judgment is that this method is practically the only one (short of compulsory consolidation, if power therefor exists) which will result in the consolidation of the railroads of this country. A large railroad corporation with hundreds of millions of stock in the hands of many thousands of stockholders and with large amounts of bonds outstanding in the hands of investors will be slow indeed to absorb a comparatively small line of railroad whether weak or strong if it can do so only by technical consolidation which will involve as a legal effect of the transaction its own corporate death and the creation of an entirely new corporate being in its place, however clear the procedure may be. If, however, it is given authority by Congress to purchase the railroad with its appurtenances owned by such company, although competing, thus making it a part of its own system held in absolute ownership, or to lease it in practical perpetuity, or even to buy and hold all its capital stock without jeopardizing its own corporate existence, it will much more readily undertake the acquisition of the property. The bill now before this committee gets away from technical consolidation as the only method of permanent unification of railroad properties and provides in addition to consolidation, for purchase, sale, lease, and other methods of unification that may be approved by the commission. If the existing law is thus amended and the necessary power as proposed by this bill is conferred, I believe all the great railroad systems now existing will earnestly endeavor in cooperation with and under the supervision of the commission work out and carry forward the policy of the Government as to unifying the railroad properties in all cases where the properties to be absorbed can be acquired upon terms involving no injustice to stockholders who have invested their money upon their faith in the honesty, ability and character of the existing property and its management.

To sum up on this point, I strongly urge that the commission be relieved of the task under the existing law of working out arbitrarily a plan for consolidating all of the railroads of the United States; that authority be given as proposed in the pending bill to existing railroad corporations for working out vountary consolidations, subject always to the approval of the Interstate Commerce Commission; that no consolidation, sale, or lease, be permitted without approval of the Interstate Commerce Commission; and that no compulsory or coercive form of consolidation be provided for because it will only add to the difficulty of effecting consolidations through the false hopes held out to the weak lines to obtain through favor of the Government a better price than they are entitled to receive. Rather than pay an unfair price the solvent companies will simply refuse to consolidate and take their chances in the courts on any coercive measures that may be resorted to.

Perhaps I should add finally that I believe that the extension and development of railroad systems, perhaps the creation of new ones through voluntary action and always subject to the approval of the commission, will prove to be greatly to the public benefit in many ways, such as simplifying corporate organization, bettering financial arrangements, improving service, effecting economies, in caring for

the weak lines obtainable at a fair price, and in various other ways. I believe that the saving in expenses has been greatly exaggerated in the public mind by various statements that have been made upon that subject. There will be some reduction of course in competitive soliciting agencies, particularly in the item of office rent, for I have observed that employees in such cases are usually provided for somehow. Of course, if all competitive agencies be abolished and the office rent and the salaries now paid be saved, the amount would be considerable. But anyone who expects this will, I predict, be greatly disappointed. I base this statement upon extended observation and also upon some knowledge of human nature forced to choose between turning a man out of a job or finding a place for him when in reach of a rich treasury with which to pay him.

The saving in the consolidation of certain accounting offices will generally not be very large because in the case of railroads already under one control this generally has been already reduced to the simplest form and the saving would probably be absorbed to a considerable extent in connection with extended operating offices. Then, as to weak lines absorbed generally, and especially if they are short lines, are operated most economically and without regard to union rules, regulations, or rates of pay. As soon as a large strong line acquires such a road it is obliged, or has been, to extend standard union rules, and rates of pay, with the result that, in my experience, there has always been an immediate jump in operating expenses of such a line. All these details with reference to expenses, however, can be more definitely stated by others, as I am not an operating officer, but base my statement of opinion upon rather close and long observations of the course of such events. So I say that while consolidations will be beneficial they will not solve the railroad problem. That will be with us until the public realize, as they are coming to realize as never before, that the railroads of this country are with rare if any exceptions honestly and efficiently managed to perform the best service they can give the public with the means at their command; that all their operations are under the closest scrutiny of Government officials to protect the public interest; and that the only possible way for the public to obtain adequate and satisfactory railroad service is to treat the railroads and railroad investors fairly and allow them to operate in a friendly atmosphere at rates sufficient to provide the service and pay a fair return upon the capital represented by the railroads.

I shall be very glad to answer any questions.

The CHAIRMAN. Are there any questions?

Mr. NEWTON. Judge, ever since the passage of the transportation act, or almost since that time, there has been a good deal of talk from the public platform every now and then, but more from the newspapers and the magazines, advocating the consolidation of railways of the country; and it has been claimed that one of the great benefits flowing to the general public from a general consolidation would be resulting economies which would bring a reduction in freight rates. Now, I take it from your statement that you do not believe that there would be any great economies effected and, consequently, no resulting reduction in the freight rates. Am I correct in that?

Mr. LOVETT. I think you are. There would be some economies, of course, in consolidation; but they would be offset in many instances by additional expense, so that on the whole I believe the amount

that will be saved from consolidations has been very much overestimated.

I do not believe, answering your question more directly, that the economies will be sufficient to justify a reduction in the freight rates under conditions heretofore existing.

Mr. NEWTON. We have out in the Middle West four large transcontinental roads, the Great Northern, the Northern Pacific, the Milwaukee and the Soo. A very large part of their revenue from freight comes from the carriage of farm products. Among the arguments that have been used in these various articles that I have read from time to time as to the benefits that would come from consolidation, is this: There would be consolidation with a railway system whose revenue is made up from the carriage of heavy commodities, a system whose revenue would come from either a different commodity or else from the carriage of a large amount of classified freight.

It is rather difficult for me to understand how that sort of a consolidation could be effected and in any way tie up with those four transcontinental systems. But is it in your judgment possible, in a system of consolidation, to so rearrange things as to have the revenue of the roads based somewhat on grain and then somewhat on another commodity and then a substantial portion on classified freight, so as to make it more uniform and less susceptible to changes in industrial and commercial conditions?

Mr. LOVETT. I do not know of any condition where that probably would control, but, of course, I am not familiar with all railroad conditions.

I think there are systems which handle one kind of traffic to a greater extent than any other, and that have a seasonal business which moves during just a few months in the year, and during the rest of the year its motive power particularly, is largely idle, which may be consolidated with some other system whose principal business moves at a different season; and there might be some economy effected there by shifting this motive power and equipment from one to the other.

The systems, however, in that situation must already be rather large and I do not know whether their consolidation would be wise or whether that consolidation alone would involve a great economy.

Mr. NEWTON. You mentioned the weaker roads. That is another argument that has been used. What is your judgment in reference to the effect of section 15–a and the recapture clause in reference to this question of consolidation?

Mr. LOVETT. That is a very broad question.

Mr. NEWTON. Yes; it is. The reason I ask it is this: 15–a, of course, takes away earnings from an efficient, economically organized and managed railroad that is paying and places them at the disposal, of course in the way of a loan, of the so-called weaker road. It has always seemed to me that a consolidation—or that the argument for consolidation based upon the weaker road, was somewhat of an enlargement of the proposition that originally went into 15–2. I wondered what your attitude is on that.

Mr. LOVETT. I do not see very much relation between the two propositions. If the stockholders of the existing road are not to get the benefit of the net earnings, I do not see that they are very much concerned with what becomes of the earnings afterwards. For that reason I have not observed any close connection between section 15–a and the provisions for consolidation.

I believe, however, that most stockholders would rather pay over to the commission, if they are bound to, the net earnings in excess of the statutory limit than to be forced to accept an unprofitable road and carry that burden, which might conceivably result in there being no net earnings.

In other words, if they retain their present properties, they are reasonably assured of net earnings to the amount limited by the statutes. If they are loaded down with unprofitable lines, they might fail to realize such net earnings.

To go a step further: The success of a consolidation plan, when the requisite authority is given by Congress, will depend finally upon the terms of the consolidation.

Mr. NEWTON. That is, the terms as between the parties?

Mr. LOVETT. As between the parties. It is going to be a matter of trading. The directors and stockholders of an existent, solvent company, will not willingly take over an unprofitable road at a price greatly in excess of its real value. By value, I do not mean any theories that may be prevailing popularly as to what is value, but I am speaking of value as understood by the business man and the ordinary investor. That is to say, what is this proposed property worth to us? Can we use it in a way that will give us profit or at least not involve loss? If so, we would be willing to take it over, if desired by the commission or the Government, on those terms. But we would be unwilling to take over a property at a price that is far in excess of any amount that we can conceivably hope to get out of it or any saving that may be made.

By that I do not mean the owners of a prosperous road would not take a property without some hope of profit in it. I am sure, from my understanding of the spirit among the railroad executives and railroad owners generally, that they desire to cooperate with the policy of the Government in respect to this matter, whether they believe in it or not; and that they will take a property upon the best terms obtainable, provided that there is not an almost certain loss of a substantial amount.

I do not believe that solvent railroad companies with an assured revenue, as against all competitors, will undertake the acquisition of a road that involves a certain loss, unless they are forced by the Government.

I believe the attitude of the officers would be that if the Government has the power to confiscate the property that way—I use that term with all deference, but that is what I believe it is—that rather than voluntarily take action that involves the solvency of their company, they will leave that responsibility to the Government and refuse to consolidate where the consolidation involves a gross injustice to their stockholders.

Mr. NEWTON. In reference to the question of the attitude of the Government regarding the enforcing of the consolidation: As I understand, the Cummins bill in the Senate permits what we call in general terms voluntary consolidation up to a certain point—five or seven years. Then, if the roads do not get together and consolidate, there is to be consolidation under a direct arrangement made by the

Government. That is not embodied, as I understand, in the House bill. I take it, in that connection, that you do not favor any form of compulsory consolidation, even in the mild form it is in the Cummins bill.

Mr. LOVETT. I do not. If it ever becomes necessary, in the judgment of Congress, to use compulsory consolidation, I should very strongly urge that Congress wait until that necessity arises; because to provide for any form of compulsory consolidation at this time as in the Cummins bill, would almost certainly defeat voluntary consolidations. As I said in my direct statement, it is an inducement for the owners of those properties to hold out for prices which will not be acceptable to the absorbing company, with the hope ultimately of bringing about a consolidation upon terms that will be very profitable to them.

Mr. NEWTON. That is all.

Mr. HOCH. If no great economies are to be expected through consolidation, the only reason for consolidation, advanced so far, that I have heard, so far as the public interest is concerned, is to meet this so-called problem of the weak lines. Is there any other great or primary reason for consolidation that you have to suggest to us?

Mr. LOVETT. I believe that service would be considerably improved by consolidations, particularly with respect to the weaker lines. I think also another very desirable result would be that it would simplify and strengthen existing systems, to which there is no objection at all, in their organization and better provide for financing their requirements.

That is, if various subsidiary companies that are without credit of their own and are dependent upon their relationship to the parent company for credit, could be absorbed by the parent company, not necessarily by consolidation, but by the purchase of their railroads with their appurtenances and assume their obligations, the credit in that situation would be considerably improved; better selling securities could be issued.

Mr. HOCH. In so far as the strong lines themselves are concerned, is there anything in consolidation that would promote the service, so that the public would get better service?

Mr. LOVETT. I do not know of anything as to those particular lines but as to lines they might acquire.

Mr. HOCH. Yes. And the improvement in service is to be expected solely upon those lines that are so-called weak lines and unable under present conditions properly to finance themselves?

Mr. LOVETT. Well, improvement in service in those instances should be expected, but I believe everybody will agree that a great improvement in service has resulted from the extension of the existing systems from what they were in former years. I am not speaking particularly of competing systems, the consolidation of directly competing lines, but of the extension of existing systems, where that is possible. I believe that would result in an improvement in service without reference to weak lines.

Mr. HOCH. In so far as strong lines are concerned, in a consolidation program, that would tend to eliminate to an extent the element of competition, would it not?

Mr. LOVETT. I hope not. I believe strongly in competition in service and facilities as an essential feature of railroad policy. I do not much favor the consolidation of competing lines unless there are other advantages that offset what competition is eliminated. I understand the law provides now—or it did provide before the transportation act, I think—that the commission could authorize, or that consolidations might be approved, where the benefit to the public from consolidation was greater than the disadvantage.

Mr. THOM. There is no Federal law of that kind.

Mr. LOVETT. Mr. Thom says that there is not such provision, but I was under the impression that in some recent legislation by Congress, there was a provision that authorized consolidation of competing lines whenever the public interest in the consolidation was greater——

Mr. THOM. You refer to one of the sections of the Clayton law. There is something on that subject there.

Mr. LOVETT. I was satisfied that somewhere in recent congressional legislation there is a provision that where the public interest is benefited more by the consolidation than it is injured by the elimination of competition, consolidation should be authorized.

Mr. HOCH. You do not favor consolidations that would in any way remove the element of competition?

Mr. LOVETT. In service and facilities, no, I do not; that is, substantial competition. I do not mean a mere incidental competition.

Mr. HOCH. Have you formed an opinion, or would you care to express an opinion, at this time, as to how many systems we might well have in this country?

As I understand it, the Ripley plan provided for 21, which was modified by the commission to 19, I believe. Do you think that that is enough or that it is too many systems in order to preserve keen competition in this country?

Mr. LOVETT. It is very difficult to express any definite opinion that is worth anything upon that subject. There are a great many important systems in this country already, and my ideas of consolidation would be that it ought to be by development of the more important systems. That may be considered a selfish view, but it is not. Those systems are the result of conditions that brought them about and some of them ought to be extended. Perhaps some new systems should be formed. But I am not very keen about the consolidation of important systems that are competitive. I believe it would be very much better to have the existing systems under the process that prevailed in the past and under which those systems themselves were created, extend wherever approved by the commission, by the acquisition of so-called weak lines or even sometimes of strong lines. But I am not in favor of the policy of throwing together arbitrarily, competing lines already constituting large systems.

Many of the combinations proposed by the Ripley plan involved the throwing together of practically parallel and competing lines; not merely competing in some small locality, but throughout a great territory. I do not believe that is wise; yet, if there is to be an arbitrary enforced compliance with the original consolidation act by the commission, I believe probably the commission and Professor Ripley did about as well as they could under the difficulties confronting them.

Mr. HOCH. Do you think that the bill we have before us here sufficiently guards against a consolidation of strongly competing lines?

Mr. LOVETT. No, sir; it leaves the question to the commission.

Mr. HOCH. It leaves it entirely to the commission, without any guiding principles laid down for the commission?

Mr. LOVETT. There is a guiding principle laid down in a section of the bill, I believe.

Mr. HOCH. That is my question, Judge, as to whether you think that the language of the bill is sufficiently definite to be a guiding principle to the commission on that proposition.

Mr. LOVETT. I believe it is. I think that it would be a very unwise policy to lay down a hard-and-fast rule. That is one trouble with the laws that exist to-day.

Section 202 of the pending bill indicates to the commission that the policy is to preserve competition in service and facilities and existing routes and channels of trade and commerce as far as practicable. That is the substance of it. I have expressed my own opinion about the policy of competition, but that is only one opinion.

Conditions may arise where the public interest may be better served by a restriction of competition through a consolidation than to fail in the consolidation. That decision is put in the commission where I think it ought to be.

Mr. HOCH. I take it that one of the main purposes here is to place in the commission power to bring about the merging of these weak lines into the stronger systems, so that the public may be served in those sections now served by the weak lines. The only way that that is to be done, as I understand it thus far from this hearing, is that the commission, having power to pass upon every proposed consolidation, may attach to the consolidation as a condition precedent that the roads will take over a certain weak line. Now, the principal difficulty, I presume, will come in reaching an agreement as to the terms under which the weak line is to be taken over into the stronger system. I presume that is the principal difficulty to be encountered.

Mr. LOVETT. I believe that is correct. That is, that will be the principal difficulty if this legislation should pass. The principal difficulty now is that there is no authority in many of the companies to take over the line, even with the consent of the commission.

Mr. HOCH. Could you give us any statement of your view, in a general way, as to the rule for valuation which should be set up in taking over one of these weak lines? Let me illustrate just what I have in mind. Let us assume that here is a weak line that is now earning 2 per cent upon the tentative valuation fixed by the commission. The weak line can not agree with the strong line on the terms, and insists upon a valuation which would amount to 6 per cent. Now, as a practical proposition, is there any way to evade this question of confiscation which you have discussed? If the commission forces the strong line to take over the weak line on a valuation which would permit it to earn 6 per cent, that involves confiscation to that extent, does it not?

Mr. LOVETT. I think so.

Mr. HOCH. Now, if the road is, as a matter of fact, earning only 2 per cent upon the tentative valuation fixed by the commission, what sort of a rule should be applied by the commission in fixing a condition precedent in that case?

Mr. LOVETT. The rule that would be applied in any ordinary business transaction. Consider the property by itself and as it exists, and consider what would be paid for it by a business man in the exercise of business judgment; what it has earned, what it is earning, and what it may look forward to earning. Consider every element affecting its value. I do not know any rule except that laid down by the Supreme Court in valuing railroad property in the case of Smyth *v.* Ames, 167 U. S., and in other cases following that decision. You must take into account every element of value affecting the property. There is no hard and fast rule. The Interstate Commerce Commission has been making valuations, and while they have not announced any rule, their reports indicate that they have followed very closely one line of reasoning—which I think is wrong, but I need not discuss that here.

Mr. HOCH. If a line, under the present rate levels, is earning, and over a considerable period has earned, not to exceed 2 per cent, if we apply the ordinary rule of business as to what that road is worth, would anybody pay more for it than that earning would indicate?

Mr. LOVETT. Not unless it had some special value to them. It is quite possible that there is some short line or weak line that might have a value to an existing system somewhat beyond what its earnings indicate. It might be desirable to extend that line into another territory or utilize it in some way in addition to its present use. In that case the absorbing line might be willing, in order to obtain it, to pay more than its value based exclusively on earnings.

Mr. HOCH. Do you apprehend that it would be in any sense satisfactory to the present weak lines to be taken over on the basis of their present earnings?

Mr. LOVETT. Not in their present state of mind.

Mr. HOCH. Then do you think that, as a practical proposition, this legislation will lead to the solving of this problem of the weak lines in which the public is interested?

Mr. LOVETT. It will to some extent. I do not know of anything that will lead to the solving of the problem of the weak lines if the owners are to be paid all they hope to get unless the Government is prepared to take them over at such prices.

Mr. HOCH. I want to ask just one or two further questions with reference to section 15 (a), to which Mr. Newton has called attention.

Mr. THOM. Before you get to that, Mr. Hoch, let me say that I assume that Judge Lovett's reference just now to the law as it existed prior to the transportation act in regard to competition is found in section 7 and section 11 of the Clayton Antitrust Act, but that did not go to the extent of authorizing the commission to do more than enforce the prohibitions of that act.

I merely call attention to that. I suppose that is what you had in mind, Judge Lovett.

Mr. LOVETT. Yes.

Mr. HOCH. It was claimed in behalf of section 15a that by the group system of rate making that was therein set up, and the pro-

vision for the recapture of excess earnings, so-called, we would have a plan that would tend to meet this problem of the weak lines. Do you think that that section has been in any way helpful toward meeting the problem of the weak lines?

Mr. LOVETT. I do not see that it has been. I hope you are not asking me about that with the idea that I am an advocate of section 15a.

Mr. HOCH. No; I am trying to get your viewpoint.

Mr. LOVETT. I do not see that it has been helpful in that situation at all.

Mr. HOCH. As a matter of fact, have not the strong lines—I am not saying this in criticism, particularly—resisted from start to finish a compliance with the provisions of section 15a, and have not the weak lines failed entirely to receive any help from the provisions of section 15a?

Mr. LOVETT. The strong lines, or many of the strong lines—some 15 or 16 of them, including the lines that I am connected with—sought by applying to the Supreme Court, in a case that involved the question, to have section 15a, in the particular that you mention, declared unconstitutional. The Supreme Court decided against them, and sustained the constitutionality of that provision. Since then there has been no resistance to that section, so far as I know, by any strong line or any other line; certainly not by any with which I am connected.

The difficulty has been that you can not ascertain whether there have been excess earnings until the commission has valued the railroad property; because the excess is based upon the value of the property as fixed by the commission. The commission has not completed that valuation, at least of the lines with which I am connected, and has not arrived at the final valuation, so far as I know, as to any large system; and the whole question as to whether there are any excess earnings awaits not only the ascertainment of the value by the commission, but probably will also await a decision by the Supreme Court on what is value, as used in that sense and as determined by the commission.

Mr. HOCH. As a matter of fact, there has been a small amount of money paid in, I believe; two or three million dollars.

Mr. LOVETT. Yes. I should have added that some of the companies—I think they are generally small companies—have estimated for themselves the value of their property and, having an excess over that value, have paid that amount to the commission.

Mr. HOCH. But even then, as I understand, the amount that has been paid in to the commission has been paid in with strings attached to it, so that it has not been available for loans to weak lines; and as a practical proposition do you think, to put it plainly, that this scheme under section 15–a would ever work out in such a way as to be of any substantial help to the weak lines?

Mr. LOVETT. I believe, since the Supreme Court has sustained the validity of that provision, that in time, when the question of value is settled, there will be lines that earn an amount in excess of the limit fixed by that section, and that such amount will be paid to the commission as required by the section, unless the law is changed. Whether it will help the weak lines or not, I do not know. I can not express any opinion on that point.

Mr. HOCH. Of course, that is the principal purpose, I take it, of taking away some of the earnings of a railroad to put into a fund for the weak lines. If it does not accomplish that purpose, it has failed in the primary purpose of the provision.

Mr. LOVETT. I do not recall the exact provision of the statute as to the use of that fund by the commission. It is to buy equipment, etc.

Mr. HOCH. It is entirely a loan proposition.

Mr. LOVETT. If that be considered a benefit to the weak lines, I believe the time will come when the weak lines will be benefited, and I believe the amount will be very considerable.

Mr. HOCH. I do not wish to go too far afield or to get into any controversial subject; but, as you are aware, it has been quite frequently contended that the strong roads have resorted to various means in order to prevent a showing of excess earnings, by over-maintenance and various methods of that sort; and as long as human nature is such as it is, I take it there will always be the incentive to do that, because there is the natural interest on the part of a strong road to prevent a showing under which it will have to surrender some of its earnings; and it seems to me that, aside from any ethics involved in it, there is that question that will always be there, and which will tend to make it impractical of operation.

Mr. LOVETT. I have heard such rumors, but I do not know of any such case. I do not pretend to say that there are not such cases; but under the power vested in the commission to scrutinize expenditures for maintenance and other expenditures deductible under the terms of the law, and the very complete system of accounting and reports that are required, and the right of inspection that the commission has, it would be very difficult for any such effort to succeed. I take it that every prosperous road, if it has large excess earnings, will endeavor to keep its property in good condition and make all the expenditures on upkeep of the property that it feels can be justified under the law. Aside from any question of ethics, if there is any question of ethics involved in it, I would regard that, myself, as a very proper act on the part of a railroad company; not to conceal or misapply earnings, but to use their own earnings for the proper maintenance of their own property.

Mr. HOCH. I do not want to take the time of the committee to pursue that further; but on this question of the power of Congress let me ask you this; and I think something of the same question is involved in consolidation that is involved in section 15–a, and that is the reason I am asking this question: The Supreme Court upheld the constitutionality of this provision for the recapture of excess earnings. If Congress has the power to group a weak line with a stong line and take away some of the earnings from the strong line for the purpose of helping the weak line, has not Congress the power to force, if it so desired, the taking over of the weak line by the strong line, even though the valuation was much in excess of what the strong line claimed it ought to be, as the basis for taking over that weak line? Is there any essential difference as a legal proposition?

Mr. LOVETT. I think there is.

Mr. HOCH. I would like to have your idea of what that difference is.

Mr. LOVETT. In the case of excess earnings, Congress in regulating carriers has, in the opinion of the Supreme Court, the right to limit the returns to the stockholders in the process of rate making to a certain sum which Congress regards as reasonable, and which the court finds to be short of confiscation. That, I understand, is as far as the Supreme Court went in its decision with reference to section 15–a.

That still leaves the owners of the property, the stockholders, in possession of their property and in the enjoyment of all their rights as stockholders, because they have realized from the first that the rates of the carrier are subject to congressional legislation. But to say that Congress can compel a man who has his investment in the stock of a company that has certain powers, and is private property, according to many decisions of the Supreme Court, to invest his money in another property that he does not want, and at a price that he regards as unreasonable, seems to me to be a very different proposition; or to compel him, through consolidation, by taking another security, in addition to the one he has, goes beyond any power that Congress has with respect to railroad companies. The power of regulation of interstate commerce and the power of limiting the earnings of interstate carriers is, as I say, as far as the Supreme Court went in the case just referred to, according to my understanding of it.

Mr. HOCH. To make a practical application in a hypothetical case, in order to follow up your line of reasoning there—I think I follow you—let us assume that here is a strong road that is now earning 6 per cent on the tentative valuation, and the commission desires, in the public interest, to bring about a consolidation with this strong line of a weak line which now, upon the tentative valuation of the commission, is earning 2 per cent. The strong line says, "We are willing to take over this weak line provided it is taken over on a capital basis of 6 per cent." But the commission forces the road to take over that weaker line on a capital basis that would earn only 4 per cent. Would not the commission have power, as an agency of Congress, to do that, provided it followed it up by increasing the charges so that the strong road could, in combination with the weak road, still earn its 6 per cent? As a matter of fact, would it not have power to do it provided it did the subsequent thing, namely, brought its earnings up to a fair basis?

Mr. LOVETT. Of course, this is a great constitutional question that you are asking. I can only answer it by saying that I think there is a fundamental difference between an act of Congress or of the commission that fixes the rates or the net income of a carrier so as to yield a certain return on that ownership, and an act that would seek to force a difference in the ownership of the property itself to which the stockholder may look for his return; to force him into an ownership and into a purchase that he is not willing voluntarily to enter. I think that is the fundamental difference between the two points. There may be a great deal more to be said on the subject, but I am only mentioning what occurs to me at the moment.

Mr. HOCH. So you are not basing it solely on the question of the earning of the road, but upon the invasion of the right of the road to determine for itself the property which it desires to own?

Mr. LOVETT. Yes, sir. I think Congress has no more power to force the consolidation or combination of two prosperous roads than it has to force a consolidation of a strong with a weak road. It is the fundamental question of the stockholder's right in ownership and the enterprise.

Mr. HOCH. If that be true, unless the strong line and the weak line can agree on terms, then how is the commission ever going to bring about a consolidation?

Mr. LOVETT. I have never believed that Congress or the commission has power to force consolidations against the wish of the company that owns the properties. I think that this legislation will be effective by opening the door to voluntary consolidations under the regulation of the commission, and since the commission, as a condition of approving the proposed consolidation, may attach conditions with respect to the taking in of another line, as this bill provides, that will lead to the absorption of many of the weak lines, and probably in time all of the weak lines.

Mr. HOCH. But, under your view, it could only lead to it through an agreement voluntarily reached between the weak and the strong lines?

Mr. LOVETT. That is my judgment.

Mr. THOM. Mr. Hoch, you appreciate that this bill does not undertake to give the commission power to enforce the condition, but only to make it a condition precedent?

Mr. HOCH. I understand that. I was just trying to get at the constitutional question. I was trying to find a basis for the distinction between the power of Congress in this case and in the case with reference to the recapture of excess earnings.

Mr. SHALLENBERGER. Colonel Thom, I did not catch all that you said. You say that the bill gives the commmission power to make it a condition?

Mr. THOM. A condition precedent to a consolidation.

Mr. HOCH. That is to say, the commission would only permit the consolidation which the strong lines desired upon the condition that they also took over some weak lines, according to the desire of the commission.

Mr. SHALLENBERGER. Do you mean that would make it possible, or do you mean that it would bring it about so that they would have to do it? Which do you mean?

Mr. THOM. I do not mean that it would bring it about so that they would have to do it, but it would be open to them to accept the condition or not. But they could not go on with the consolidation unless they accepted it.

Mr. SHALLENBERGER. Could they not go on and do business under this bill unless they did consolidate?

Mr. THOM. They could not go on with the consolidation unless they complied with the condition.

Mr. LOVETT. I should like to add this to my answer: I am satisfied, from my knowledge of the railroad situation and of the people who are directing the policy of most of the systems, that there will be

a very great desire on the part of all of them to carry out the policy that is finally settled by Congress with respect to consolidations, if they can do so without injury to their stockholders. The commission is wielding an enormous power. The large systems, especially, are subject to that power, and they feel it—I mean power within perfectly constitutional lines—and they will go a long way in working out the policy and trying to accomplish the purpose of this legislation; and I believe that influence, with the power the commission has to restrict consolidations practically in their discretion, will mean that the policy of Congress will in time be substantially accomplished. I do not say that every small line or every short line will be absorbed. But it comes down finally to the question of terms between the companies, provided the requisite authority is given by the statute. I have never believed that any compulsory consolidation by Congress could be effective, although that is a legal question.

Mr. HOCH. I would like to get a little clearer the meaning of the present law which is sought to be repealed. Colonel Thom has referred to paragraphs 2 and 4, particularly, of section 5 of the interstate commerce act as amended by the transportation act. Paragraph 2 of section 5 is as follows:

> Whenever the commission is of opinion, after hearing, upon application of any carrier or carriers engaged in the transportation of passengers or property subject to this act, that the acquisition, to the extent indicated by the commission, by one of such carriers of the control of any other such carrier or carriers either under a lease or by the purchase of stock or in any other manner not involving the consolidation of such carriers into a single system for ownership and operation, will be in the public interest, the commission shall have authority by order to approve and authorize such acquisition, under such rules and regulations and for such consideration and on such terms and conditions as shall be found by the commission to be just and reasonable in the premises.

Now, if that is to be considered, as some contend, I understand, not merely an ad interim proposition, but an alternative plan to paragraph 4, would not that accomplish practically what you are trying to do in the present law, by granting to the commission power to authorize one road to take over another under such conditions as the commission might prescribe?

Mr. THOM. No; you have not the machinery for doing it, Mr. Hoch. Judge Lovett has shown in his statement, the necessity for Federal authority in the State corporations to do these things. Now, one of the questions that have arisen, and which has been much debated in connection with the provision which you have just read, is as to whether, when the commission authorizes such acquisitions, the law goes by intendment further and creates a power in the corporation to carry it out. There is a difference of legal opinion on that question.

Mr. HOCH. That is exactly what I want.

Mr. THOM. Some insist that that does, by legal implication, go to the extent of conferring the authority, with all that the authority implies. Others contend the contrary. But there is no settled legal view on that question, and the subject is too large to rest upon that doubt.

Mr. HOCH. The one purpose of this bill is to make clear the power which is conferred in paragraph 2 of section 5 and to give additional powers clearly to provide the machinery to accomplish it?

Mr. THOM. Yes, sir.

Mr. HOCH. What is the essential distinction here between an acquisition "by the purchase of stock or in any other manner" and a consolidation? Would not that be a consolidation?

Mr. THOM. Well, you will find in paragraph 6 of that same section, this:

> It shall be lawful for two or more carriers by railroads, subject to this act, to consolidate their properties or any part thereof, into one corporation for the ownership, management and operation of the properties theretofore in separate ownership, management and operation, under the following conditions.

There is the distinction between the ownership of the properties by one company, on the one hand, and the continued ownership of the properties by several companies under paragraph 2, and merely the control being vested under paragraph 2. They draw the distinction there, in other words, between the control by lease, by stock ownership or otherwise, under paragraph 2, and the technical consolidation under paragraph 6. And, of course, you appreciate that what is provided for and contemplated by paragraph 6 can not be carried out at all until this plan of the commission is finally promulgated.

Mr. HOCH. Under paragraph 4?

Mr. THOM. Yes.

Mr. HOCH. I do not think it would be very fruitful to pursue this question; but personally I do not see a very great deal of substance to the distinction that is sought to be drawn between the control provided in paragraph 2 and a consolidation, so far as the public interest is concerned.

Mr. THOM. Judge Lovett has suggested—and I may put into the record at this point that idea, in reply to what you have suggested—that it is a very different question from the standpoint of financing a company whether they have it in the form of complete ownership of property or whether it is bound together loosely by such considerations as stock ownership and things of that sort. It is a very different problem from the standpoint of getting the new money necessary for providing the service.

Mr. HOCH. The language that I have particularly in mind is "in any other manner not involving consolidation."

Mr. THOM. There is the distinction. You can not have the ownership of the properties.

Mr. LOVETT. Legal distinctions, Mr. Chairman, that are not always appreciated by railroad men, or even by others, are made much of sometimes by bankers' counsel when it comes to an issue of securities or raising money on questions of that sort; and I am sure that they do see the distinction and make the distinction that has been suggested here.

Mr. HOCH. There is ample justification, if you want to do this, to make it clear in the statute.

Mr. LOVETT. Yes.

Mr. SHALLENBERGER. I did not hear all of your statement, Judge Lovett. I was called out. But do you favor this bill? Are you here in support of the bill?

Mr. LOVETT. I am; yes. I favor it.

Mr. SHALLENBERGER. Do you state that without this legislation consolidations could not be effectively or efficiently made that you think should be made? In other words, the present law does not per-

mit the thing to be done that you think ought to be done, and you believe that this further enactment is required?

Mr. LOVETT. I am quite sure that that is true in many States.

Mr. SHALLENBERGER. Do you state that Congress has the power, in your judgment, to override the laws of States and permit these consolidations, even if it is prohibited in the constitution of a State? Do you think we can set that aside?

Mr. LOVETT. I believe so. I am quite clear in that opinion.

Mr. SHALLENBERGER. Has that ever been decided by the Supreme Court of the United States? In cases where the constitution of the State, as in the State of Nebraska, as you know, prohibits the consolidation of competing parallel lines, has that ever been decided by the Supreme Court?

Mr. LOVETT. I do not at the moment recall.

Mr. SHALLENBERGER. I understood that that particular thing had never been passed upon as yet.

Mr. LOVETT. I do not at the moment recall any decision on that direct question.

Mr. THOM. The Supreme Court has decided, Judge, that the constitution of a State and the statutes of a State rank exactly the same when brought in conflict with the Constitution of the United States.

Mr. LOVETT. I would like to add this also: That taking many decisions of the Supreme Court upholding the paramount power of Congress with respect to interstate commerce, it seems to me clear, that as against the power of the State—whether in the form of a constitutional provision, as it is in many States, or of legislative enactment, or of the withholding of approval by some public utilities commission—the act of Congress with respect to interstate commerce, and especially with reference to the agencies employed in that commerce, is superior to all such regulation. I do not know that I have made that clear; but I am firmly of opinion that in all such provisions, and in whatever form the policy of the State may be expressed, that policy is subordinate to the authority of Congress with respect to interstate commerce.

Mr. SHALLENBERGER. Did you have any part in the drafting of this bill?

Mr. LOVETT. Not of this particular bill. I have had part in the drafting and redrafting of many bills on this subject.

Mr. SHALLENBERGER. I understood Colonel Thom to say that this bill is the product of two years' study by the general counsel of the railroads. Is that about right?

Mr. THOM. I said that so far as the machinery provided by the bill is concerned, which is substantially here—not exactly—and substantially in the Cummins bill, it has been examined by the counsel for the railroads for the past two years.

The CHAIRMAN. But you do not say that the bill was drawn by the railroads. I do not want that to appear in the record, because that is not true.

Mr. THOM. That does not appear from anything that I have said.

Mr. SHALLENBERGER. Then we will say that it meets their approval. That is what I wanted to find out.

The CHAIRMAN. They have scrutinized it.

Mr. SHALLENBERGER. They have scrutinized it. All that I want to find out is the truth.

Mr. THOM. What I mean to say is that provisions similar to these have been scrutinized by the lawyers and have been found, in their opinion, to take care of the conditions on the various railroads.

Mr. SHALLENBERGER. Now, Judge Lovett, section 15a, which has been referred to, in addition to the recapture clause provides that the Interstate Commerce Commission shall establish such rates as will produce as nearly as possible a 5¾ per cent return upon the valuation of the railroads in certain designated groups. The result of that has been, of course, that certain railroads have earned very much greater returns than those that were not so efficiently operated or so favorably located; and there is a distinct value in that provision of law to the Union Pacific Railroad, is there not, outside of the recapture clause? Is it not the fact, and does not the act itself recognize it, that under the force of that section it was inevitable that certain railroads would earn more than was determined to be a just return?

Mr. LOVETT. I have not discovered any value to the Union Pacific in it as yet.

Mr. SHALLENBERGER. And because of that provision of the law, which has been sustained by the Supreme Court, and under the direct mandate of that law, the Interstate Commerce Commission raised the freight rates an average of 33 per cent to the railroads over the United States, and it is justified under the direction of that particular section; is not that true?

Mr. LOVETT. Well, they raised the rates substantially following the war.

Mr. SHALLENBERGER. Was it not based upon what they considered the mandate of Congress?

Mr. LOVETT. I presume it was based upon that act of Congress.

Mr. SHALLENBERGER. Now, that was justified, as I view it, because the public was to receive the benefit of an adequate transportation system, and we were to have an honest, efficient, and economical administration of the railroads; is not that true?

Mr. LOVETT. I think there is such language in the act.

Mr. SHALLENBERGER. And what is the public interest, did you say, Judge, in the operation of a railroad?

Mr. LOVETT. The service that was afforded.

Mr. SHALLENBERGER. Is it not true that it would mean this: We will take freight, because that is the thing that I am discussing now, and we will take your line, the Union Pacific, for instance. As a citizen of Nebraska, I am interested in the prompt and expeditious delivery of that freight and its transportation also at the lowest possible cost to me that will also give you a fair return upon your investment. Is that not a fair statement?

Mr. LOVETT. I think that is a fair statement. You are interested, I think, more in the service than you are in the rate.

Mr. SHALLENBERGER. Now, in order that that shall be brought about, the law requires that the railroad shall have honest, efficient, and economical administration. Now, efficient operation of a railroad means, as I take it—to the railroad managers—that such management and operation of the railroad as will produce a fair return; but honesty and economy in the management imply that I

shall receive the lowest possible rate that can be granted me upon the freight. Why is it that in the provision stating that "it is hereby declared to be the policy of Congress, in order that an adequate and efficient transportation service may be maintained in the United States," you eliminate the words "honest and economical administration"? Are those two things to be eliminated by a decree of Congress?

Mr. LOVETT. I could only guess at the answer as to why it is eliminated; and that would be that it is unnecessary. It is already in the law, and it is not proposed, so far as I know, to change section 15a.

Mr. SHALLENBERGER. But you are declaring now by a decree of Congress what is to be the policy of the Interstate Commerce Commission. Now, I can state this, because I have been attending the hearings on the Hoch resolution, and that contains the same language; that the adjustment of the rates shall take into consideration the maintenance of an adequate transportation system, and also the honesty and efficiency of the administration of the railroads.

The CHAIRMAN. Governor, that provision is not stricken out by this bill. That is in paragraph 2.

Mr. SHALLENBERGER. It is not stricken out, but it is not in this bill. I have found two places where it is not included.

The CHAIRMAN. Paragraph 2 of section 15a is not stricken out.

Mr. SHALLENBERGER. Oh, no; but I mean here in this bill, which declares the policy of Congress in order to do a certain thing.

The CHAIRMAN. But section 15a is still the law.

Mr. SHALLENBERGER. I understand that, too. But I listened to the representatives of the railway commissions of several States there, presenting the matter to the Interstate Commerce Commission from the side of the shipper, and after one of these men had pictured the suffering of the shipper and the western farmer under the present conditions and referred to this particular Hoch resolution which they were considering, a member of the Interstate Commerce Commission said to this gentleman, "Yes; but the act says that we must maintain an adequate transportation system." So, no matter what it does to the shipper, no matter what it may do to the people according to that construction, and the interpretation of those words, "adequate transportation system" enters very materially, evidently, into the judgment and the opinion and the decision of the Interstate Commerce Commission.

Now, later there came up this question of the honesty of the reports of the railroads, and we have had admissions before this committee that the Interstate Commerce Commission has not had sufficient funds to inspect these reports. That question was raised at the Hoch-Smith hearing and one of the members of the commission said, "We do not ask that the reports of the railroad companies shall be investigated by accountants, to find out whether or not their reports are honest, but you do not do that with the farmer either."

So it is evident to me that if we eliminate entirely the words "honest" and "economical" and declare that it is not the policy of Congress to take into consideration those two things when consolidating railroads——

Mr. LOVETT (interposing). I hope I will never be understood as objecting to incorporating the requirements of honesty and economy as many times as may be desired.

Mr. SHALLENBERGER. No; I do not think you would. That is the reason I asked you if you had been instrumental in drafting this bill.

Now, to go a little further into that, I think that the Supreme Court decisions show very plainly that if the words "adequate transportation" had not been written into section 15a they never would have sustained the recapture clause; if I can read the English language. Now, if we leave out the words "honest" and "economical," it looks to me as though we are removing from this bill a very strong direction to the commission that was in the previous law.

You would be willing, then, to have the words "honest" and "economical" put into this legislation?

Mr. LOVETT. Certainly. I have no objection to repeating that as many times as are considered necessary. I would be very glad if there is any way to improve what we are doing now in that respect.

Mr. RAYBURN. You do not object to efficiency; to any added degree of efficiency?

Mr. LOVETT. No.

Mr. THOM. I want to throw out the idea here that this bill provides that the traffic be moved "at the lowest rates compatible with the maintenance of adequate and efficient transportation service," and that that necessarily incorporates in it what is in section 15–a on the subject of economy, efficiency, and honesty of operation. I am merely mentioning that as what I conceive to be the law.

Mr. SHALLENBERGER. I think that all the way through the laws passed by Congress touching upon railroads there has at least been a declared policy to preserve competition between the railroads. Do you think there is competition as to rates between the railroads?

Mr. LOVETT. Not so far as I know. I do not understand that it is the purpose to preserve competition in rates, because the rate-making power is vested in the commission, and we are obliged to charge what the commission prescribes. That prevents competition in rates.

Mr. SHALLENBERGER. I understood you to say—as I say, I only got part of it—that some of these short lines or weak lines that are to be consolidated with strong lines are being operated with different charges for labor than are paid by you, so that consolidation would affect adversely their earning power if put into larger system.

Mr. LOVETT. I can not answer as to any particular short line to-day. I can only state that during my connection with the Union Pacific, and some years ago with the Southern Pacific, we connected with a great many short lines, and very few of them had the same scale of wages and working rules that the Union Pacific and the Southern Pacific had. They operated very much cheaper. I know that at different times, we acquired some of these short lines, and in every instance the operating expenses of that line rose immediately under our management, because we applied—we had to apply, under our arrangements with the unions—the same scale, the same standard of wages, to the short line we acquired that we do to other similar situations in the existing system, which in every instance, as I recall, was higher than the scale paid by the former owners; with the result that the expenses of operating went up. We also were required in many instances to give or we did give better service, than the former owners were required by the public to give. We improved, in every instance the character of

99790—26——7

the roadbed; in many instances we rebuilt it in order to bring it up to the standards of the system, which involved expenditures.

Mr. SHALLENBERGER. Do you consider, Judge Lovett, that if Congress has this very great power of overriding constitutions and State laws that we should very carefully endeavor to find out the opinion of the public before we pass legislation?

Mr. LOVETT. That is a political question, if you please. I have no opinion on that.

Mr. SHALLENBERGER. We had a very interesting statement by Doctor Duncan yesterday in which he advocated this bill, and he quoted principally the opinions and arguments of Senator Cummins of Iowa in favor of the general proposition. Now, the Esch-Cummins law, which laid down this tentative proposition of consolidation, was advocated and introduced in the House by Mr. Commissioner Esch, at that time chairman of this great committee, who had represented his district for 20 years, a district that had always been of his political party; and then, in the fall, after this bill was passed, that great lawyer and Representative, the chairman of this committee, came up for judgment before the people of Wisconsin in a year when the State went 250,000 for his party, and the nation went 7,000,000, and he was defeated by a man who was little known up to that time.

The State of Iowa has the highest standard of education and the lowest percentage of illiteracy of any State in the Union; a State with a high average of intelligence. They are going to pass now upon Senator Cummins; the first time they have had a chance since he has been advocating this proposition. Do you think that it is a fair way for Congress to arrive at public opinion upon a matter of this sort when the States register their judgment upon it?

Mr. LOVETT. I do not feel competent to pass opinion upon questions of that sort.

The CHAIRMAN. Judge Lovett, will you be here in the morning?

Mr. LOVETT. I had expected to leave this afternoon or this evening, but of course I am at the service of the committee.

The CHAIRMAN. It is impossible for us to have a session this afternoon. Can you be here at 10 o'clock in the morning, Judge?

Mr. LOVETT. Yes, sir.

The CHAIRMAN. The committee stands adjourned until 10 o'clock to-morrow morning.

(Thereupon, at 11.55 o'clock, a. m., the committee adjourned until to-morrow, Wednesday, May 26, 1926, at 10 o'clock a. m.)

RAILROAD CONSOLIDATION

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Wednesday, May 26, 1926.

The committee met at 10 o'clock a. m., Hon. James S. Parker (chairman) presiding.

STATEMENT OF ROBERT S. LOVETT—Continued

The CHAIRMAN. Mr. Burtness, you had some questions you wished to ask.

Mr. BURTNESS. I think, Judge Lovett, that Mr. Hoch brought out most of the things that I had in mind, but I want to be sure that I fully understand the present law. If I understand the law correctly, and your interpretation of it, there is now no method of actually consolidating railroads; is that correct?

Mr. LOVETT. There is no Federal authority for actually consolidating railroads, if I understand the statute correctly, because consolidation means awaiting a report by the Interstate Commerce Commission dividing all the railroads into a limited number of systems; and that has not yet been done.

Mr. BURTNESS. That plan has not yet been adopted as such. It has simply been tentatively proposed.

Mr. LOVETT. That is the situation.

Mr. BURTNESS. And as I understand it, you construe the provisions of subdivision 6 of section 5 to apply only after that plan has been adopted; that is, the plan is regarded as a prerequisite to taking any steps under subdivision 6.

Mr. LOVETT. That is my understanding of it.

Mr. BURTNESS. What is confusing in my mind is this: We read about the proposed Nickel Plate merger, etc. Until I got into these hearings, I had the impression that that was really a consolidation, but I take it that those proceedings must have been possibly under the provisions of subdivision 2 of the act.

Mr. LOVETT. The situation, Mr. Congressman, as I understand it, is that the commission has held, by a small majority of its membership, that where power existed under State laws for consolidation, corporations subject to such State laws could proceed with the consolidation without reference to the Federal law.

Mr. BURTNESS. Was their application then actually for a consolidation of the railroads into one corporation, or was it an application under subdivision 2 of section 5, whereby they might acquire in some way the ownership of the stock of the other corporations?

Mr. LOVETT. I can not speak with exactness as to that particular case, but it is necessary in any case before the issue of, new securities to obtain the approval of the Interstate Commerce Commission; and even though there be authority under certain State laws to consolidate, if the consolidation involves the issue of new securities, the approval of the issue by the commission must be obtained.

Then, in order to lease, as I understand, they must have the approval of the Interstate Commerce Commission. I am not sure as to the latter point, but generally, this law, prohibits consolidation until this plan has been promulgated by the commission, but permits a lease in advance if the commission will approve it.

Mr. BURTNESS. Or the commission might also approve the purchase of stock by one carrier, in the property of another—that is, the corporation owning another carrier in such a way as to control it—and things of that sort.

Mr. LOVETT. That is true. To state it again: Where it is desired to lease a line or to acquire control of it through the purchase of stock or any other arrangement that does not involve a consolidation the commission now may grant authority for that under existing law: and that has been done in many instances.

Now, in addition, when authority exists under State law for a consolidation, they may even consolidate under the State law, according to the decision of the commission. I myself have very grave doubts about the correctness of that decision. It has never been tested in the courts.

Mr. BURTNESS. Does the consolidation that is provided for in subdivision 6 of section 5, as you construe the law, require the setting up of a brand new corporation, or may one of the corporations proposed to be consolidated be treated as the corporation which will own the consolidated carriers after consolidation?

Mr. LOVETT. The existing law is silent in terms upon that question, but it uses the term "consolidation" without qualification; and it evidently applies, in the absence of any definition of what is known in law as a consolidation. Now, I understand that when the term "consolidation" is used without any qualification, it refers to a legal consolidation, which means, as I understand it, the extinguishment of the merging companies and the creation of a new corporation.

Mr. BURTNESS. That is the impression I had. This is the language; and I think it would do no harm to have it in the record:

(6) It shall be lawful for two or more carriers by railroad, subject to this act, to consolidate their properties or any part thereof, into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership, management, and operation, under the following conditions.

I certainly was not clear in my own mind as to what that meant, although I had the impression that it would require a new corporation rather than an absorption of several corporations by one of the several carriers proposed to be consolidated.

Mr. LOVETT. Section 6 was evidently drawn by a very careful lawyer and he used terms accurately and not in a loose sense; and it is evident to my mind that what was aimed at was the consolidation ultimately of these corporations, as consolidation is understood

in the law; that is, into a single corporation and the extinguishing of the existing corporations.

In realizing that it would require considerable time for the commission to promulgate this plan, provision was made for leases and for the acquisition of control through the ownership of stock or by other means approved by the commission, that did not amount to a consolidation.

So that the commission has proceeded upon application of parties to approve leases and to approve acquisition of control through the purchase of stock; but the commission itself by this law is without power to approve a consolidation until they shall have divided all the railroads of the United States into a limited number of systems.

Mr. BURTNESS. Of course, you gave your reasons as to why you did not think that the provisions permitted under subdivision 2 would be really practicable in so far as effecting general consolidation.

Mr. LOVETT. I have no objection to that. I believe it is very useful to permit sales and leases.

Mr. BURTNESS. And control by one corporation over another?

Mr. LOVETT. And control by one corporation over another. I believe that is very useful and it has served a very useful purpose in the public interest up to this time. But it does not meet the requirements of the situation.

Mr. BURTNESS. Turning to another feature, one thing that bothers me somewhat is the proposal to permit consolidations to go on simply in a voluntary way in the hope that business relations will be such that eventually these consolidations will work out most satisfactorily for all of the interests of the country, is this: It occurs to me that when that process of consolidation has proceeded as far as it will go in that voluntary way, that there will be a lot of cats and dogs left scattered all over the country, that will represent a very serious problem. That is, that the voluntary consolidations will naturally eventually leave out the very poorest of the roads. Is there any possible way to prevent that in a constitutional or legal way?

Mr. LOVETT. That may be the result to some extent, but bear in mind that in the legislation that is proposed both by this bill and by the bills Senator Cummins has introduced and supported in the Senate, the commission is given power to impose conditions upon the approval of consolidations.

Suppose, for example, that the road I represent should apply to the commission for authority to acquire and absorb some other line. The commission under the proposed legislation pending both in the Senate and in the House would have power arbitrarily to impose as a condition of its approval of that application, the taking over of some other line. Then it would be for the applying company to determine whether the consolidation sought was so important and desirable as to justify it in taking in a line that it did not really want.

Mr. BURTNESS. But, excepting that condition, it would still be a voluntary act, of course.

Mr. LOVETT. It would still be a voluntary act. And I think it is not at all unlikely that in the course of years, 3, 4, or 5 years, or any period one wishes to assume, there will still be left a number of railroads in a shaky condition which have not been absorbed. I would not call them cats and dogs, because I do not believe

there are many of that sort even now, but it is quite likely there may be roads of that sort left out.

Then account can be taken of the situation, and if compulsory measures are deemed necessary, it seems to me that would be the time to determine what, if anything, should be done.

The reason why I so strongly urge that decision upon any compulsory measures be deferred are, first, that you can tell more about it at that time, when the power of compulsion is to apply, than you can now; and, secondly, if you propose compulsion or anything in the form of compulsion now, you will simply be holding out encouragement for the owners of some of these lines to look to the Government to help them out in the trade. And they are not as likely to agree upon terms as they will be if left dependent upon the facts of the situation and the merits of the proposition.

Mr. BURTNESS. And aside from those reasons which go to the policy of the subject, I took it it was also your definite opinion that any attempt at compulsion, or compulsory consolidation, would contravene the provisions of the Constitution, or you would be confronted with those questions and it would be impossible——

Mr. LOVETT. That is, of course, my opinion; but others have different opinions.

Mr. BURTNESS. I was very much interested in your distinguishing between the recapture clause with reference to so-called excess earnings and what the situation will be in the event an attempt might be made to compel a strong road to take over a so-called weaker line; and it did occur to me that there is a very big difference between doing what simply amounts to a limitation of earnings and trying to do what it occurs to me would really be reducing the value of the property owned by a corporation, in the event that any attempt was made to compel it to make another investment, where the investment itself might not only be a doubtful one, but where that investment might at least tend to decrease the earning power of the property that it had on hand.

Mr. THOM. Mr. Burtness, in connection with the idea which you have been developing, I find in this bill on page 8, paragraph 2, a provision which may be of interest to you.

Mr. HUDDLESTON. Judge, this bill appears to involve some very important questions of policy, as well as of law, and I am interested to know the extent to which it was being considered by the railroad interests and to what extent they assent to some of its more prominent features. Could you enlighten me on that?

Mr. LOVETT. The extent to which this bill has been considered?

Mr. HUDDLESTON. Yes; has been studied.

Mr. LOVETT. I can speak only for myself, and my participation in such consideration. Even before we entered the World War, the question of consolidation of railroad properties with a view to extending the systems and taking care of some of the so-called weak lines, or many of the short lines, as they were called, was constantly urged. The Association of Railway Executives, I think, was formed in 1914 or 1915, and I had much to do with it in its formation. I participated actively in it up to 1924, when I gave up most of my activities in connection with railroads. We began the consideration of legislation at that time. The project was considered

by what was called the Newlands Committee, which I think was a joint committee of the Senate and House. Extensive hearings were held.

Mr. HUDDLESTON. I refer more particularly to the provisions of this bill.

Mr. LOVETT. I do not know as to the provisions of this bill. We have been engaged for several years in drafts of a bill. I suppose that I myself have worked on at least 25 different proposals and drafts.

Mr. HUDDLESTON. You have, of course, studied this particular bill.

Mr. LOVETT. I have studied this particular bill. I had nothing to do with the preparation of this particular bill, but I have criticized and commented on and made suggestions about the various bills that have contained provisions similar or substantially the same as some of the provisions of this bill. But this particular bill I had nothing to do with in its preparation. But I have studied it pretty carefully.

Mr. HUDDLESTON. Do you approve the bill as a whole?

Mr. LOVETT. I believe I do. There might be some amendments here and there necessary, but I think that the general scope of it is wise. Particular provisions perhaps should be amended, but the general scope of the bill I approve.

Mr. HUDDLESTON. Would you say that section 202 on page 3, which is headed "Declaration of policy," has the approval of the railroad interests generally?

Mr. LOVETT. May I glance over that a moment?

Mr. HUDDLESTON. Yes.

Mr. LOVETT. I have found that in railroad organizations and I believe in most other associations, not even excepting legislative assemblies, compromise is necessary; that one can not always get his own particular notions and ideas embodied in the agreement or in legislation.

I approve in view of that situation, and I believe that generally it is approved by the railroad executives of the country, though I can not answer for them. I do know that a great many approve it.

Mr. HUDDLESTON. May I ask, to be specific, just what advantage can be derived by a strong, profitable road, in being loaded down with a weak one?

Mr. LOVETT. In former days, Mr. Huddleston, before the passage of the antitrust laws in 1890, many railroads were built for and many held, for what was known as a nuisance value. They could cut rates and generally destroy or disturb the business of a strong line. Many of them were bought up for that reason. The antitrust law of 1890 put an end to that business and the nuisance value disappeared. That situation has continued practically to the present time, and now the rate-making power is in the commission.

So that the danger of a weak competitor seriously injuring a strong road and creating for itself a nuisance value really does not exist. But the management of the large systems of the country have learned a great deal from experience. A large system is more exposed to public opinion and public criticism than a small system, and I know there is a very strong feeling among the railroad managers that

with the vast powers of the Interstate Commerce Commission to which they are subject, it is good policy and wise business for them to conform to the public opinion of the country, the informed and intelligent public opinion, and to cooperate with the commission as far as possible. The policy of the railroads is really controlled by the executives and, it being the policy of Congress, to bring about consolidations and combination of railroads, and there developing a real, in my opinion perhaps an undue regard, for the so-called weak lines, it is good policy to meet the wishes and requirements of the commission and work out this policy of consolidation and absorb the weak lines where it is possible to do so, without subjecting their stockholders to an undue loss. That is if they can meet the wishes of the commission with respect to such line without a very substantial loss to their own stockholders, why, they will do it whether they want it or not.

There will be under the pending legislation in both Houses that inducement always before a strong company to take over a weak company if called upon by the commission to do so, if it can do it without too great loss to its stockholders.

Mr. HUDDLESTON. Do you accept that policy of looking after the interests of the weak lines, regarding the transportation service as a whole, as necessarily a final public policy?

Mr. LOVETT. I do not think any public policy is final. It certainly has not been so with railroads. Ten years ago we were prosecuted if we did what we are required to do by this bill.

Mr. HUDDLESTON. Let us say that the question was a new one. Do you think it is good public policy?

Mr. LOVETT. To do substantially what this bill provides?

Mr. HUDDLESTON. No; I mean to have this regard for the weak lines and place them as a burden on the shoulders of the efficient, well-operated railroads.

Mr. LOVETT. I think it depends upon each particular case. I believe it would be unwise policy to require a strong railroad to take over a weak line if it subjected the strong railroad to an injustice in the way of an excessive price. I think that that would be wrong. I believe that would discourage railroad investments.

I believe it would be a very great injustice to the stockholders, because, after all, it is shifting an unprofitable investment that somebody has made from his shoulders onto the shoulders of innocent stockholders of the strong roads.

Mr. HUDDLESTON. Such an action is bound to be reflected either in decreased dividends or in the lowering of the standard of service, is it not?

Mr. LOVETT. It depends upon whether there is a loss.

Mr. HUDDLESTON. I say, where the strong road is loaded down with a weaker one, the tendency is to strike an average both in earnings and in service, is it not?

Mr. LOVETT. I do not believe that you will ever succeed in loading a strong road down with weak ones by any voluntary action, because I do not believe the executives responsible for the management of the property will give it away; and that is what it amounts to, until they are compelled to do so by law. But if they can take over

a weak road without substantial loss, that is, at its real value, they will be glad to cooperate with the commission to do it, and I see nothing wrong in that action from the standpoint of public policy or otherwise.

Mr. HUDDLESTON. Of course, Mr. Lovett, that depends upon the degree that the executives are willing to make concessions to public sentiment as represented by the Interstate Commerce Commission. Either it would be a matter of cold business or it would be a desire to cooperate with them, which it itself means a concession to public sentiment.

Mr. LOVETT. It would be a matter of cold business in every instance.

Mr. HUDDLESTON. You think it will be?

Mr. LOVETT. I think it will be.

Mr. HUDDLESTON. So that the element of desire to fall in line with some wish of the commission as the arm of Congress will not be an important factor?

Mr. LOVETT. Will not be an important factor?

Mr. HUDDLESTON. Yes.

Mr. LOVETT. I think it will. I think that that is good business.

Mr. HUDDLESTON. That was not just what I had in mind, however, as good business. That is what we call in Congress playing politics.

Mr. THOM. Isn't that good business?

Mr. LOVETT. That seems to be good business for many.

Mr. HUDDLESTON. I am very much interested in the legal questions with reference to this bill. It confers upon corporations chartered by States powers in excess of their charter powers, and in some instances in contravention of their powers, in violation of them and in violation of the constitutions of the States which are their authors.

Mr. LOVETT. No doubt of that; without that, the bill would not be very valuable as to many of the sections.

Mr. HUDDLESTON. The trouble that I have in my mind is, what is the source of authority of Congress to do that? It is the commerce clause, is it not?

Mr. LOVETT. I think so.

Mr. HUDDLESTON. And nowhere else?

Mr. LOVETT. I would not say nowhere else, but I feel confident myself that the commerce clause is ample. I do not know what other provision there might be.

Mr. HUDDLESTON. Do you think there is any other authority in the Constitution for such action by Congress?

Mr. LOVETT. I should not like to answer that offhand, because I have believed that the commerce clause of itself is ample authority for Congress to act.

Mr. HUDDLESTON. The creation of a corporation is in the exercise of the police power of the State, as I recollect, is it not?

Mr. LOVETT. Every State, of course, has the sovereign authority to create a corporation. When you get to the question of police power, that is rather a wide field. But it is the sovereign right of the State to create a corporation, if it wants to, in accordance with its own constitution and laws.

99790—26——8

Mr. HUDDLESTON. That sovereign right is dependent on and must be related to some principle, it would seem to me, some basis. States do not have the sovereign right to do everything, do they?

Mr. LOVETT. I understand they have the sovereign right to do everything not prohibited by the Federal Constitution, and there is nothing in the Federal Constitution that prohibits the forming of a corporation by a State.

Mr. HUDDLESTON. The tenth amendment is generally considered as prohibiting the invasion by the Federal Government of the sovereign powers of the States. Do you think it is clear that this is not such an invasion?

Mr. LOVETT. I think it is.

Mr. HUDDLESTON. I think that Congress has undoubted authority to create a corporation to engage in interstate commerce. I wonder what power is given under the commerce clause to take hold of a creature of the State, an arbitrary entity created by the State having no separate existence, and reshape and remold it according to the desire of the Congress, its life all the time being referable back to the State which created it?

Mr. LOVETT. Have you examined the case of California against the Central Pacific Railroad, in 127 U. S.?

Mr. HUDDLESTON. Members of Congress do not examine cases; we do not have the time. That is one great difficulty under which we labor, that we deal with men who have the time and who do devote themselves to these questions, while we proceed more or less in the dark.

Mr. LOVETT. I think that case answers the question you have propounded. Briefly, in that case, Congress took a State corporation—the Central Pacific Railway—and empowered it to build the Central Pacific Railroad and utilized it as a State agency and conferred upon it these powers. The court went so far as to hold that a general law of California taxing the franchises of the Central Pacific Railroad, was unconstitutional, because many of those franchises were conferred upon it by Congress; and that might be the effect of this law, but this bill provides, as they all do now, against the possibility of relieving the corporation of taxation.

Mr. HUDDLESTON. I have here the case of the Louisville & Nashville Railroad Co. against Kentucky, reported in 161 U. S., 677. I have not read it in many years. I have just opened the book and have not had time to read it since we have been in here. But it is my recollection of that case that the laws of Kentucky forbade consolidation of railroads under certain conditions. The railroad attempted to proceed without regard to that law and brought up the question to the Supreme Court that the State had no right to pass such a law because of the jurisdiction of the Federal Government over interstate commerce. In other words, the State had no right to forbid an interstate carrier, chartered under its laws, to acquire another line. It is my recollection that the Supreme Court held in that case that the law was a proper law and was not in contravention of the commerce clause, and was a proper exercise of the State's police power. Are you familiar with that case?

Mr. LOVETT. No; but I see no reason at all to doubt that the Supreme Court would hold just what you state.

Mr. THOM. I was suggesting to the judge, Mr. Huddleston, what evidently was in his mind, that the Supreme Court would uphold that in the absence of legislation by Congress.

Mr. LOVETT. I think without reference to the absence of legislation by Congress.

Mr. HUDDLESTON. Congress having intervened in the situation under the commerce clause to assume complete and exclusive control of the subject of interstate commerce. This, as I recollect it, was a law which dealt with that particular subject and said that the railroad so engaged in interstate commerce must not acquire another line.

Now, we have constitutions in many of the States, I think Kentucky also—Minnesota is one, Nebraska is another, and Texas, as I recollect, is another.

Mr. LOVETT. And Mississippi.

Mr. HUDDLESTON. Provisions of their constitutions forbid railroads chartered under their laws from consolidating with other lines under certain condition, and in the case of Texas the constitution forbids that any railroad chartered under the laws of Texas shall operate a line in any other State. That is a proper and rightful exercise of the State's police power under the law as it now stands.

This bill that we have before us, overturns that Texas constitution and authorizes a Texas corporation to acquire a road in Arkansas and to operate it there. It would seem to me that if it be now the proper exercise of a State's police power to forbid that, the Federal Government, having already assumed exclusive control of interstate commerce as fully as it is able to do, unless it is able to do this, then this bill is of very doubtful constitutionality.

Mr. LOVETT. I happen to be rather familiar with the constitution of Texas, being a native of that State, and having practiced law there for many years. That is one of the States I had in mind in my direct statement to the committee yesterday.

Texas having been a republic before it became a State, has always been quite jealous of its authority, particularly over its own corporations, and the existing constitution of Texas, adopted in 1876, contains a provision in the broadest terms prohibiting common control through ownership of stock by lease, purchase, consolidation, or otherwise, of parallel or competing lines. It contains another provision that in effect prohibits any foreign railroad corporation from operating in that State, and no foreign corporation except one that got into the State before that constitution was adopted——

Mr. HUDDLESTON. The Texas & Pacific?

Mr. LOVETT. No; the Missouri, Kansas & Texas, built a few miles in the State before that constitution was adopted. It was a foreign corporation. It has since been sold out—foreclosed—and now is a domestic corporation; and the Texas & Pacific which was built under a Federal corporation has operated in that State for many years. Many of them without paying attention to the constitution or, perhaps, not having local counsel, made leases that extended their operations into that State, but as soon as it was brought to the attention of the attorney general proceedings were commenced and all such leases were canceled.

So that no foreign corporation operates a railroad in Texas to-day or has operated a railroad in Texas for at least 25 years, except the Texas & Pacific, a Federal corporation.

This bill—and in fact the transportation act itself upsets that completely and Texas has not questioned whatever was done under the existing law, because they seem to realize the power of Congress to override its constitutional provisions with respect to interstate commerce and carriers engaged in interstate commerce.

The reason for that, as I understand it—and to sum up now as briefly as I can: The reasons for my view are that all those constitutional provisions when they come in conflict with the supreme power of Congress to regulate commerce and, in regulating commerce, to regulate the agencies of commerce, are subordinate to the Federal Constitution. Congress is entitled to employ, within the limits of due process of law, any agency or any method it chooses to use in the regulation of interstate commerce. Certainly it can utilize an existing state corporation if it sees proper to do so, and has utilized them. All the power of the Interstate Commerce Commission is exercised with respect to State corporations and State agencies and that power, as you, of course, know, is very extensive. The necessity for this bill arises, in my judgment, from the fact to which you call attention, that there are a number of States, Texas among them, that contain these constiutional prohibitions of just what is proposed by this bill.

No corporation created in Texas—and all the railroads of Texas are operated by State corporations, except the Texas & Pacific—can comply with this bill, because they are not only prohibited by the constitution of the State which created them from doing the things they are expected to do under this bill. But they have no power under their charter and have no power under the law of the State to consolidate with or lease a competing line or to lease or sell any of their lines to a foreign corporation. So, without legislation of this sort, the lines of Texas can not do what is expected under this bill. Those lines are a part of the Santa Fe and a part of the Southern Pacific System and a part of other foreign companies through the ownership of stock, but that is as far as they can go.

Now, if this bill, or some legislation similar to this bill or the bill pending in the Senate—they are both substantially the same in that respect—is enacted into law, it confers upon these State corporations the power to do what this bill requires, and without corporate power to sell or lease, you, as a lawyer, will realize the corporation can not do it. It must find power either in its charter or in the lawmaking power to which it is subject.

Now, with respect to interstate commerce, these Texas corporations are just as much subject to the power of Congress as any other State corporation, and unless Congress can utilize those State corporations in the carrying out of the policy, the only alternative will be Federal incorporation, just as in the case of the Texas & Pacific.

I do not think anybody will question that Congress could pass a law providing for the incorporation of railroad companies to take over every railroad in Texas or in any other State, with similar constitutional prohibitions. As I stated yesterday, personally I would prefer Federal incorporation for all the railroads, but I believe public sentiment generally is against that. But it is the only alternative we see to legislation such as is proposed here, utilizing the existing State corporations, and I know of no reason why they are not just as much subject to Congress with respect to the regulation of interstate commerce as are the rates for transportation made within the State. They are also subject to the power of Congress as was recently held by the Supreme Court.

I am sure that it has been held by the Supreme Court in many cases—I do not recall one to mind just now—that State power which conflicts with Federal power, the constitution of the State is just as subordinate and just as much subject to the Federal Constitution as is legislation by the State or an ordinance of a city or a rule of a State commission. The question is whether it is the authority of the State that is interposed against the Federal power. If it is, the form of it is wholly immaterial and the constitution is no more effective against the Federal power than any other form in which the State acts.

Mr. HUDDLESTON. Of course, that is very clear, and the point involved is whether there is really any conflict of power. I was about to call your attention to this: I take it that numbers of these carrier corporations are chartered by special acts of legislatures or general laws which give the State the power to cancel their charters. In other words, the State created and the State can destroy so far as the corporate entity is concerned. Take a corporation of that kind: Can Congress thwart the desire of the State to destroy its creature which was reserved in its charter and perhaps safeguarded by its constitution?

Mr. LOVETT. Well, that is a good argument in favor of Federal incorporation.

Mr. HUDDLESTON. I am not arguing that issue with you, nor the necessity for the bill. All I want to get is your reaction to this purely legal question.

Mr. LOVETT. Answering that question, my opinion is that Congress can thwart that object of the State, because the State is subordinate to the power of Congress to regulate commerce, and if a State were to attempt to exercise that power fully, because the corporation had conformed to a Federal requirement within the power of Congress, I should not think it would be successful.

Mr. HUDDLESTON. I should not like to have the discussion confined to a case in which that was the reason for the action of the State, but we will say that the State has what is considered proper ground for the repeal of a special act creating a corporation. Is the State forbidden to do that, can the State be forbidden to do that, or can a State be forbidden to do it by this bill?

Mr. LOVETT. There is nothing in this bill that prohibits the State from doing that.

Mr. HUDDLESTON. It gives certain powers to these corporations which are continuing, are they not?

Mr. LOVETT. Yes,

Mr. HUDDLESTON. And which, if they are properly conferred, of course, the State can not take away. But it seems to me the instance I have cited, the situation I have stated, would afford a very severe test of Federal power in the extent to which it might intervene to destroy a power that the State has.

Mr. LOVETT. I should not think the State could take away the power conferred by Congress. If it were sought to repeal the charter because the corporation had obeyed a requirement or had exercised a right given it by Congress, I should not think that effort would be successful. I should not believe, however, that a State

would be prohibited from exercising any right of repeal it might have, if exercised without reference to what Congress had done.

Mr. HUDDLESTON. What would be the effect of the repeal of a special act chartering a carrier, this bill being in effect as law?

Mr. LOVETT. I suppose the creditors and stockholders would take charge of the property, probably through a receiver, and operate it in accordance with the laws of the State until they could bring about a reorganization. Certainly it has been settled beyond controversy that the repeal of a charter does not destroy the property in any sense.

Mr. HUDDLESTON. You think that power would remain in the State, notwithstanding this measure?

Mr. LOVETT. There is nothing in this bill, so far as I can see, that takes that power away.

Mr. HUDDLESTON. That would seem to be based on the thought that the instrumentalities of commerce, as exemplified by a corporation created to carry it on, are not the same thing as commerce, and that the State might deal with these instrumentalities when it could not deal with the interstate commerce; and it would seem to be, in its logic, an argument that the State has the exclusive control over its creature, and that that creature can not be given powers in plain and intended violation of the State's constitution. Would you not think that?

Mr. LOVETT. I would not. The Supreme Court held, as early as the time of Chief Justice Marshall, that the power of Congress to regulate commerce extends not merely to commerce but to all the agencies and instrumentalities of commerce. And Congress is exercising that power to an enormous extent right now, as you will see from the various provisions of the interstate commerce act, and it is exercising it without question. Now, when a State incorporates a company to build a railroad, or itself builds a railroad and engages in interstate commerce, it is subject to the power of Congress.

Mr. HUDDLESTON. You take it that that applies to corporations created by the State?

Mr. LOVETT. Yes.

Mr. HUDDLESTON. And, of course, it would apply with equal force to a citizen of the State?

Mr. LOVETT. Yes; I suppose so, consistent with his rights under the Constitution.

Mr. HUDDLESTON. It would seem to apply with greater force to the citizen, because, of course, he has certain natural rights; the corporation has none.

Mr. LOVETT. I have not studied it very closely with reference to the rights of a citizen, because citizens vote, and they take care of their rights pretty well as against questions affecting their rights under the Constitution.

Mr. HUDDLESTON. Corporations are usually in touch with people who vote.

Mr. LOVETT. It does not often appear in the returns. [Laughter.]

Mr. HUDDLESTON. I can only say that I envy you the place you live. [Laughter.] It certainly appears out my way.

Now, passing on from that—because really I must plead poverty and inability to discuss the matter for lack of investigation—I take it that under our grouping system, where replacement value is the

standard, and in a sense affords the rate basis, because that kind of value is the base of rates——

Mr. LOVETT. That is not settled yet.

Mr. HUDDLESTON. I am very much interested that it should not be settled in that fashion; but I am afraid it is.

Mr. THOM. Judge Lovett has just won a case on the other side of that question.

Mr. HUDDLESTON. But I was just about to say that where that exists the valuation at which one railroad system might take over another, although it be only a few cents on the dollar to what its valuation for rate-making purposes as fixed by the Interstate Commerce Commission might be, would be of no public interest or public benefit, would it? It could not possibly result in a reduction of rates. In short, if the Union Pacific should buy the Orient—which I know is not going to be done; at least I think I do—at 1 cent on the dollar on its common stock, which I imagine the stockholders would be glad to get—I forget what its tentative valuation is probably something above $40,000,000—that valuation would still be imposed on that group as a burden on rates or a basis for the fixing of rates, namely, the valuation fixed by the Interstate Commerce Commission, and the fact that the road was sold at a discount to another carrier would not be a factor in insisting on a reduction of rates; is not that correct?

Mr. LOVETT. If that basis of valuation should be finally established, some of the prosperous roads might more readily buy some of the so-called weak lines, because they might prefer to spend their excess earnings in that way, and enhance the aggregate value of the property that is to be taken into account before they pay any excess over to the Government.

Mr. HUDDLESTON. So, in point of fact, it might tend to sustain rates rather than reduce them?

Mr. LOVETT. Well, that is a field of such wide speculation that I do not think I could say anything in answer that would be of any value to the committee.

Mr. HUDDLESTON. If the consolidated carrier—one profitable line consolidated with an unprofitable line—should be permitted to use its excess earnings to develop the unprofitable carrier, that would afford a very excellent excuse for holding rates up to what they were, would it not?

Mr. LOVETT. I can not answer that better than to give you this possible illustration: Suppose, for example, that the Union Pacific should at any time have what it would have to recognize as net earnings in excess of the limit fixed by Congress, and which it would have to pay over to the Government, based upon the theory of valuation that you mention, the reproduction or replacement value; and suppose that that excess was a million dollars. Now, it would not hurt the Union Pacific in that case to take that million dollars and buy another road that was earning nothing, or earning but little, but which was valued on the replacement basis at a million dollars, and by "sweetening" (if I may use that term) the value of its property by the addition of another railroad that did not cost it more than it would otherwise pay over to the Government, it would have an inducement to do it, if by that means it could satisfy the commission and the community and the law and make everybody happy,

Mr. HUDDLESTON. Yesterday you referred to the Goose Creek Railroad case as affirming the validity of the recapture clause. I wanted to ask you at that time, and I will now, if you think that case finally settles the point.

Mr. LOVETT. I do not know. Legal questions generally are not settled as easily as that.

Mr. HUDDLESTON. It was held in that case that the railroads having taken this money from the shippers in excess of what they were rightfully entitled to, it did not belong to them; they held it merely as trustees, and could not complain of being required to pay it into the Treasury. That is my recollection of the basis of the decision. Now, I am wondering what would be the attitude of the court if a shipper, from whom the money was being taken, without the right to take it, should object to it, and could present the matter so as to get some decision. At least it can not be said that it is not his money. I am anxious to know whether you think that that question is finally disposed of.

Mr. LOVETT. If I understand section 15a, the shipper is not considered in the disposition of the money. He has to pay the rates fixed by the Interstate Commerce Commission. The net results he is not concerned in, according to the meaning of section 15a, as I understand it. I could not say that the question is finally settled. I hope it is not, but possibly it is.

Mr. HUDDLESTON. My reasoning about the matter, before the case was decided, was that either the money belonged to the shipper or it belonged to the railroad company. It certainly did not belong to the Government. The Government could not take it unless it took it in the form of a tax, and obviously it was not a tax; and I could not see how the Government could ever acquire ownership of this fund.

Mr. LOVETT. We made that argument in that case, but the court did not sustain it.

Mr. THOM. That argument was also made before this committee when the question was up of the adoption of the recapture clause.

Mr. RAYBURN. Mr. Lovett, I was wondering yesterday just what you intended to convey, or what was conveyed, in an answer of yours to Governor Shallenberger's question, and that was if you thought that the reason for the 30 per cent increase, or whatever increase in rates came about immediately after the transportation act, was the result of any provision in the transportation act.

Mr. LOVETT. I think it was, Mr. Rayburn. The requirement of the transportation act that the commission should make rates sufficient to maintain adequate railroad service—I am not giving the exact language, but that is the meaning of it—had considerable influence in bringing about the increase, or some of the increase, that was made immediately after Federal control. For the first time, as stated by the commission, Congress by the transportation act assumed a responsibility for the maintenance of service by the railroads. Prior to that the railroads had been left to shift for themselves. They had been subjected to regulation. All the legislation except that providing for the early construction of the roads had been restrictive. This was in aid of the railroads as well as the public, because Congress seemed to realize that the railroads could not live and could not continue to render adequate service under the rates then prevailing.

I should like to add this, however, with reference to that particular increase: Most of it has been wiped out since, so far as the Western railroads are concerned, by several reductions made by the commission on agricultural products and other items, and then by a general reduction of 10 per cent that applied over the whole country, and also by voluntary reductions made by the railroads in some cases to equalize competitive conditions and also to relieve particular situations which required a reduction in rates in order to develop and encourage the traffic. So there is not very much of that increase left to the Western roads.

Mr. RAYBURN. What effect, specifically, upon the rate structure of the country do you think the repeal of section 15a would have at this time; I mean the rate-making provisions?

Mr. LOVETT. I have not studied the traffic matters sufficiently in recent years to answer that question.

Mr. RAYBURN. I mean in a broad sense; in the broadest sense.

Mr. LOVETT. You mean the rate structure; what effect it would have upon the rate structure?

Mr. RAYBURN. Yes.

Mr. LOVETT. Or do you mean the scale of rates?

Mr. RAYBURN. That is what I mean, yes; whether it would have the effect of lowering the rates.

Mr. LOVETT. I do not believe it would; because I think they are as low now as they can be made constitutionally, on many lines. However, that is guessing at what the Interstate Commerce Commission might do, which I prefer not to do.

Mr. RAYBURN. Your answer, though, was that the provisions of section 15a, you thought, had considerable to do with the raise in rates following the enactment of the transportation act?

Mr. LOVETT. I think it backed up the commission pretty strongly in that action.

Mr. RAYBURN. What effect do you think it would have upon the general railroad situation, taking into consideration the strong and the weak lines, if the Interstate Commerce Commission were not to apply the adequate transportation facility provision of the transportation act and go back to its old provision?

Mr. LOVETT. If they reduced the rates, and the reductions were sustained, I think it would very greatly impair the transportation service of the country.

Mr. RAYBURN. I understood you to say yesterday that you did not look for any economies growing out of consolidation.

Mr. LOVETT. No; I did not say that. I did not say "any economies." I do say there will be economies, very considerable economies, but I believe the amount has been very greatly exaggerated in the public mind by various statements that have been published from time to time.

Mr. RAYBURN. What do you think is going to become of the so-called weak lines if something is not done?

Mr. LOVETT. Well, I do not understand that they are in any worse position now than they have been ever since they were created, except in the cases where they have served the purpose for which they were originally built, which was to develop and serve some particular traffic, such as lumber, etc. I do not want to appear as unsympathetic with the weak lines; but I think they are provoking, if I may be allowed to say so—a great deal more sympathy than they are en-

titled to. Why are they weak? And then, where are the weak lines? A statement was made by Senator Cummins in a series of articles he wrote some time ago, published in the western papers and republished as a Government document, that was commented upon by Doctor Duncan in his statement before this committee recently. I think that that is a subject which is considerably misunderstood.

What is a weak line? One that pays no dividends, but is loaded down with a large bond issue? It is not weak simply because it does not pay dividends. Possibly its capitalization was wrong. You can not determine whether a line is weak or not until you look into its situation. The fact that it does not pay as much as some other road in dividends or interest returns does not mean that it is a weak line necessarily. It more likely means that it was an unprofitable venture or a bad investment or a bad capitalization. There may be a variety of reasons for its condition for which the stockholders of prosperous lines ought not to be made to pay. That is my point about it.

Now, I do not know of any reason why a mistake in a railroad investment should be any more the concern of the Government than a mistake in any other investment. If a man chooses to buy stock because it is cheap, with the hope of getting a profit on an increase of it, he is taking a risk. Or, to speak more particularly of the road with which I am connected, if instead of buying Union Pacific stock the man chose to buy Chicago, Milwaukee & St. Paul stock—I mention that because it was mentioned here yesterday, and the question was raised as to whether it was a weak line—that is a mistake he made, and he ought to bear the consequences. If he is unfortunate in building a railroad that ought never to have been built, or if he happens to have acquired a railroad that has served its purpose by the exhaustion of the timber or the particular service that it was designed to perform, that is his business misfortune. Of course, I take it that Congress is not really interested in the owners of those roads. I am sure that Senator Cummins has made it clear that he is not; that he is interested in the service to the public.

But where are those lines failing in their service to the public? Where is there any weak line that has not done what it was intended to do? The mere fact that it is not profitable to the owners does not settle the question at all. Does it continue to operate? A few roads have been abandoned. The total mileage was mentioned by Doctor Duncan in his statement to the committee the other day. It is surprisingly small. But if it is the purpose of the advocates of the weak lines to equalize investments, and to relieve a man who made an unwise or unfortunate investment in a railroad and turn his troubles over to the one who made a wise investment, I protest that it should not be dealt with in that way. The whole question is service. Now, what is necessary to continue the service performed by the weak lines? I do not know of any examples given here of lines that are going out of business on that account. There may be a few. The Orient was referred to as one. That was a foolish and an unnecessary venture. Now, if Congress is going out to take care of all those enterprises, I think it ought to do it at the expense of the Government and not at the expense of the stockholders of roads which have been wisely planned and managed.

Mr. RAYBURN. That is a very good statement, and I am glad to hear you make it. Of course, you have never been a Member of

Congress when they made application to abandon some little jerkwater railroad that ought never to have been built.

Mr. LOVETT. I have had my troubles, but not of that particular kind.

Mr. RAYBURN. But here is what has taken place in this whole situation. Of course there are a lot of lines built on hope, and it has been a vanishing one ever since. But they are there. Towns have been built up; ranches have been turned into farms. Out in our country, nearly all of west Texas has been plowed up, all except the rocks. They have built towns along there instead of farms, and somebody has built a railroad out there. Those railroads are not paying. Some of them are not; most of them are not. But a road of that kind is necessary and vital to the life of that community. It is unloaded here in the last analysis. You never saw a chamber of commerce in your life that did not want all the railroads built that started in that direction. Then, when they want to set a rate, to allow them to live, they come back on the other side just as strongly.

I have been sitting here listening, and I do not ask many questions, because I generally find that somebody else will bring out better than I can what I have in mind, if I wait. But I am not in favor of Government ownership. I am not in favor of the Government taking over these lines. But the longer I sit on this committee, Judge, the bigger the question looks to me. What are we going to do with the railroads? I do not know.

Mr. LOVETT. Is not the problem of the weak lines to which you refer largely solved by the development of the motor traffic? They are generally short lines. The probabilities are that some of the longer lines could be divided among other systems. Some particular portions of them might be taken by some of the stronger lines, if they could do it at a fair price.

I do not sympathize to the extent that some others do with the weak lines. Most of them really can be cared for without loss to others, if they would take a fair price; but I do not believe a man who has made a bad railroad investment ought to be helped to unload it on a strong line at an unfair price.

Mr. RAYBURN. The large railroads are guilty themselves in a great many instances. In the last five or six years the country around Lubbock and Plainview, Tex., has developed considerably. They have plowed up that rich land and have planted it in cotton and wheat. Yet three or four strong lines, if it had not been for that provision in the transportation act, would have been in a dead race to get out there. They had applications here, every one of them, before the Interstate Commerce Commission to go into that territory. The Santa Fe was one of them. If they had all built in there, unless they had made a Dallas or a Houston pretty quick, they would have starved. And yet the strong lines wanted to do that themselves. We had a bill that passed the Senate to take away from the Interstate Commerce Commission the power to veto applications for new construction. The pressure is mighty strong from everybody who wants to see something doing in his community, and if somebody gives them the hint that they might get a railroad in there, they take the bridle off.

Mr. LOVETT. If the strong lines build such branches, they build them as feeders, and, of course, if they are not profitable of them-

selves, they have to carry them. I think that restriction on unnecessary building is a wise thing, under the policy that Congress has adopted.

But there are some conditions on the Union Pacific that I may use as illustrations. I do not want to detain the committee unnecessarily about this. There are two lines independently built on the Union Pacific to serve particular mining developments, and along those lines was developed some agriculture, some ranches and some small towns, the mines proved disappointing. They were exhausted and were abandoned, and the railroads are there. They have been taken over by creditors who would like to get rid of them and would like to sell them to the Union Pacific. But they are of no use to us. They would be a burden. They are now operated most economically. They pay no attention to union wages or other similar requirements. We were appealed to so strongly in one instance by the officers of the State of Wyoming, where one of them is located, that we agreed finally, but most reluctantly, to take over one and operate it for a period. We actually lost $10,000 a year in operating it during that time.

Mr. RAYBURN. Here is what is bothering me: I do not think the people of the country can pay what it is going to cost under the present circumstances to keep these so-called weak lines going. They are certainly not willing to, and I do not believe they can. Because I think rates are like tariffs. They can get so high that they defeat themselves, because the traffic will not move. Therefore, if there is not some hope of these stronger lines, that have not these excess earnings, making the weak lines that they are supposed to take over more nearly sustaining by joining them up with a real system, I do not understand what we are going to do about it.

Mr. LOVETT. I believe most of them will be taken over if they can be gotten at a fair price. But I think the strong lines will be unable to take them over as long as the weak lines feel that they are encouraged by Congress to hold out and that they will get their price.

Mr. RAYBURN. There is one more question I want to ask you. In view of the decision in the Goose Creek case and the general trend of the decisions of the courts for the past several years, what lack of power is there in Congress over the instrumentalities of interstate commerce except confiscation?

Mr. LOVETT. To confiscate them?

Mr. RAYBURN. No; except confiscation. What power does Congress lack, or what power is there over the instrumentalities of interstate commerce that Congress does not have, except the power to confiscate?

Mr. LOVETT. And taking property without due process of law.

Mr. RAYBURN. That is confiscation.

Mr. LOVETT. Well, I do not know of any power that Congress lacks except that.

Mr. RAYBURN. That is my opinion.

Mr. MAPES. I would like to ask you this, Judge: As I understand it, you say there would be a greater tendency on the part of the strong lines to take over the weak lines if they could get them at a fair price. With this bill on the statute books, do you think it would be within the power of the Interstate Commerce Commission, and if so, would it be a legitimate exercise of that power, for the commission to fix

rates—manipulate them, if you want to use that expression—with a view of making the owners of the weak lines more willing to fix a fair price on their property?

Mr. LOVETT. I do not think they would have any such power. That is coercion, compulsion, appropriation of property, as a penalty for not doing what they want them to do; and there is no such power.

Mr. MAPES. What I have in mind is this: In the grouping system, and perhaps in the general policy of the country to keep all the lines running that it is possible or advisable to keep running, the commission fixes rates which give, in the language of the transportation act, an unreasonable return to the lines that are more favorably situated in order that those that are not so favorably situated can live. What would prevent the commission from fixing rates that would only give the more favorably situated lines a reasonable return?

Mr. LOVETT. Under the decision in the so-called divisions case involving the New England roads the Supreme Court went a good long way in holding that the commission has power to take into account questions of that sort in fixing divisions between the roads. But I do not understand that it has said anything that justifies the commission in manipulating rates otherwise than as a division between a strong road and a weak road. I think that it has great power so far as they are connecting lines.

Mr. MAPES. But if Congress repealed the grouping provision of the transportation act, the commission might fix rates in that way, might it not?

Mr. LOVETT. I do not see how its power would be enhanced by a repeal of that provision. In other words, the commission, of course, has only such powers as Congress confers upon it, and Congress can confer those powers subject to the limitations of the fourth and fifth amendments as to taking property. But, of course, in the absence of legislation, the commission would not have a free hand in fixing divisions between lines.

Mr. MAPES. It takes the grouping provision of the law to justify the commission in fixing a rate which will give the lines which are more favorably situated an unreasonable return, does it not?

Mr. LOVETT. It takes legislation by Congress. I do not know that that particular form is necessary—the grouping.

Mr. MAPES. And if that legislation were taken away, why would not that have a tendency to make the weaker lines come in with the stronger lines at a more reasonable price?

Mr. LOVETT. I do not know whether that would have any effect or not on the temperament or the hopes of the so-called weak lines.

Mr. MAPES. Do you think it would be a reasonable exercise of the power of the commission?

Mr. LOVETT. I think it would be very unerasonable; but I am not a Congressman.

Mr. MAPES. Well, of course, the declaration of policy here is that it is a good thing to have roads consolidated. I do not know what Congress will do in that respect. We want to do the reasonable and right thing, of course. But there are some people who think that the weak lines ought to fish for themselves.

Mr. LOVETT. There is a very wide range, of course, in the power of Congress over railroads. They can adopt a policy that limits the revenue of the roads to a bare existence—just short of confiscation;

they can not go below that—or they can adopt a policy that will make the roads very wealthy and give them large returns. All that is in the discretion of Congress so long as they do not get to the point of confiscation.

Mr. CROSSER. Judge, reverting for a moment to the question of the power of Congress over the States in the matter of creating or destroying corporations themselves, many not the distinction be that the Congress has the power over the physical instrumentalities or means used in interstate commerce, rather than going so far as to say that they will make a corporation for the State or not, as they see fit?

Mr. LOVETT. There is no limitation in the Constitution except the fourth and fifth amendments.

Mr. CROSSER. The State of Ohio, for example, as a consequence of the Dartmouth College case, adopted that provision that is in some constitutions to the effect that they may revoke the charter granted to the corporation at any time. Of course, a franchise granted to a State corporation is not quite the same, necessarily, as a franchise that is exercised by a railroad in going through the country.

Mr. LOVETT. I think practically all the States have provisions of that sort.

Mr. CROSSER. Is it not really a fiction to pretend that it is any longer a corporation of the State, if the National Government can put laws on the books of State legislatures?

Mr. LOVETT. I should think it would not be a fiction.

Mr. CROSSER. If it is going to continue the corporation beyond the time fixed in its own charter, or even in the statutes?

Mr. LOVETT. I should not think it would be a fiction; because see what Congress has already done with those corporations.

Mr. CROSSER. As a matter of principle, however?

Mr. LOVETT. I believe the State that reserves the power of repeal could repeal the charter of a corporation. If it does it because the corporation is responding to this policy of Congress, that power is not so clear. But if it does it without reference to that particular act, I believe it would have the right to repeal the charter.

Mr. CROSSER. That is the next question that I was going to ask. In Ohio we can revoke the charter of a corporation without giving any reason for it; simply arbitrarily.

Mr. LOVETT. Yes.

Mr. CROSSER. Do you think that power would be taken away, according to our theorizing here, by this proposed legislation?

Mr. LOVETT. I do not think so.

Mr. CROSSER. We could still do that?

Mr. LOVETT. I think so.

Mr. CROSSER. I think that is the position I would take.

Mr. PHILLIPS. Judge, I would like to have one point cleared up. Suppose that we had a railroad that had served its purpose; that is, the timber had been cut or the mine had been exhausted; but nevertheless it could serve some good purpose there. You would not object, as I understand, to making a special case of that railroad, and allowing that one road a discrimination in rates; that is, allowing it to charge more than the prevailing rates for that district?

Mr. LOVETT. I would not object to that at all. I think in many instances that should be done.

Mr. PHILLIPS. Would that have a tendency to help solve the situation and prevent railroads from being abandoned?

Mr. LOVETT. In many instances, yes; although, if a long line, its rates are liable to be competitive.

Mr. PHILLIPS. I understand that.

Mr. LOVETT. And if it is a short line, the business is likely to be taken by the motor trucks. In other words, it is an unfortunate situation.

Mr. PHILLIPS. But there would be no objection to a particular railroad in a particular district being allowed to charge higher rates than those prevailing in that district?

Mr. LOVETT. No. I think that wherever the conditions exist that enable the road to avail of an increase in rates, it ought to be allowed; because those who want the railroad, and insist on its being maintained, ought to be willing to pay.

Mr. PHILLIPS. Has that been done in many cases, or in any cases at all?

Mr. LOVETT. I do not know.

Mr. LEA. If a railroad company were incorporated under the Federal law and brought suit against one of these weak companies to condemn and acquire the property, what would be the standard of value?

Mr. LOVETT. As I understand the decisions of the Supreme Court, beginning with Smyth *v.* Ames (169 U. S.) and reaffirmed in many other cases, you ascertain the value or determine the value of a railroad property, wherever that question arises, just as you do the value of any other property; considering its disabilities, the purposes for which it was created, its earnings, its expenses, and the net result; taking into account the great number of circumstances affecting value which the court enumerates, and to which it adds, "and all other facts and circumstances pertinent to the question in the particular case," or language to that effect.

Mr. LEA. So the standard of value would be the same as that applied to other private property?

Mr. LOVETT. Yes; considering the character of the property.

Mr. LEA. Yes; but the general principle involved would be just the same. It would be a different standard from the standard of value for rate-making purposes fixed by the Interstat Commerce Commission, would it not?

Mr. LOVETT. That is my opinion, and that was the decision recently of the three judges of the district court in California.

Mr. LEA. The question as to taking care of these weak roads is largely a question of whether the stockholders of the weak roads or the strong roads or the public shall bear the burden of it, is it not, fundementally?

Mr. LOVETT. I think that is it.

Mr. LEA. And the problem is to get an equitable distribution and to fix the burden of that loss?

Mr. LOVETT. Yes.

Mr. WYANT. Judge, we have a railroad up in Alaska which is a weak line. Have you anybody in mind that might take it over? We are called upon every year to make large appropriations for it.

Mr. LOVETT. I think the Government already has it; has it not?

Mr. WYANT. I was thinking that we might induce some other strong system to take it off our hands.

Mr. LOVETT. I do not know of any at the moment.

Mr. WYANT. That is the same thing that troubles us.

Mr. HOCH. I would like to add just one brief comment on that Goose Creek case, because it seems to me that some of the legal questions are the same that are involved here. In that case the strong lines brought the action to resist the surrender of their excess earnings. It has been suggested by Mr. Huddleston that if an action were brought by a shipper who had shipped over a strong line and had paid the rate fixed under the group system there might be a different issue and a different determination. I do not recall whether the court said anything specifically about the shipper, but as I recall the reasoning of the case it would be this, as applied to the shipper: Congress has power not only to require a shipper to pay a rate which will maintain the service over the particular line over which he ships, but also has power to require him to pay a rate which will help to maintain transportation service as a whole in this country. If that reasoning is correct, it seems to me there would be no difference as to whether the case were brought by a shipper or by the strong line.

Is not that your recollection of the basis, really, of the decision?

Mr. LOVETT. I do not remember the language of the decision in that particular, but I believe very strongly that your statement is correct as a general proposition of law. Congress or its agency, the commission, can fix the rate, and the shipper's remedy is against Congress or in court. It is against Congress, really, because it is not a question of confiscation. They are not taking his property.

Mr. HUDDLESTON. Judge, pardon me for returning to this case of Louisville & Nashville Railroad Co. against Kentucky, but I have now been able to find the part of the decision that I wanted to read to you, beginning on page 702:

> It has never been supposed that the dominant power of Congress over interstate commerce took from the States the power of legislation with respect to the instruments of such commerce, so far as the legislation was within its ordinary police powers. Nearly all of the railways of the country have been constructed under State authority, and it can not be supposed that the States intended to abandon their power over them as soon as they were finished. The power to construct them involves necessarily the power to impose such regulations upon their operation as a sound regard for the interests of the public may seem to render desirable.
>
> In the division of authority with respect to interstate railways, Congress reserved to itself the superior right to control their commerce and forbid interference therewith, while to the States remains the power to create and regulate the instruments of such commerce so far as necessary to the conservation of the public interests. If it be assumed that the States have no right to forbid the consolidation of competing lines because the whole subject is within the control of Congress, it would necessarily follow that Congress would have the power to authorize such consolidation in defiance of State legislation—a proposition which only needs to be stated to demonstrate its unsoundness.
>
> As we have already said, the power of one railway corporation to purchase the stock and franchise of another must be conferred by express language to that effect in the charter, and hence, if the charter of the L. & N. Co. had been silent upon that point, it will be conceded that it would have no power to make the proposed purchase in this case. As the power to purchase, then, is derivable from the State, the State may accompany it with such limitations as it may choose to impose.
>
> It results, then, from the argument of the appellant that if there be any interference with interstate commerce it is in imposing limitations upon the exercise of a right which did not previously exist; and hence, if the State permits such purchase or consolidation, it is bound to extend the authority to every possible case or expose itself to the charge of interfering with commerce. This proposition is obviously untenable.

I was just about to comment that I read that more for the purpose of the record than otherwise. It seems to be a very clear decision on the point, and I am not advised of any qualifying decision. I want to ask you this specifically: Has this matter ever been passed on by the Supreme Court? Has the Supreme Court ever held that railroads may be consolidated, either under act of Congress or otherwise, when such consolidation is not authorized by the States which chartered the consolidated corporations?

Mr. LOVETT. I do not understand that that precise question has been passed on, because I do not know that Congress has ever authorized any consolidations.

Mr. HUDDLESTON. Except in the transportation act.

Mr. LOVETT. Except in the transportation act of 1920; and there have been no consolidations under that act. There have been combinations, and they have not been questioned by the States.

I may add, with reference to the decision you have just read, that I do not understand the question of authorizing a corporation to do what it is prohibited by the States from doing—as, for example, to consolidate—was involved in that case at all. Congress has not taken any such action. So far as that point is concerned, the question was not involved, whatever the court said about it; and, limited to the questions involved in that case, as I understand it, it seems to me that the decision is perfectly good to-day, and is not inconsistent with any position that I have taken here.

In a word, as I understand, the railroad company was contending that because it was engaged in interstate commerce it was beyond the control of the State with respect to these matters, because the action it proposed to take was in furtherance of interstate commerce; and the court decided that the fact that it was engaged in interstate commerce did not relieve it from legislation of the State with respect to its corporate actions and corporate powers.

Now, since that decision was rendered the court has gone a good deal further. I have in mind, for instance, the Northern Securities case. The principal defense there was that the Northern Securities Co. was created by the State of Minnesota, and was merely exercising the powers that were conferred upon it by the State of Minnesota; and the Supreme Court said that State action or State laws could not interfere in any way with the power of Congress to regulate interstate commerce or the instrumentalities of interstate commerce. I am sure that it would be possible to collect many cases in which the court has upheld the power of Congress under the commerce clause to overturn laws and constitutional provisions of the States.

Mr. HUDDLESTON. The particular point involved in this L. & N. case, as I understand it, is that the railroad was seeking to consolidate with another railroad in violation of the law of the State of Kentucky.

Mr. LOVETT. Yes.

Mr. THOM. Without the authority of Congress.

Mr. HUDDLESTON. And the Supreme Court held that the prohibition against consolidation was not an encroachment upon the

right of Congress to regulate interstate commerce, but was a proper exercise of the State's police powers?

Mr. LOVETT. In the absence of legislation by Congress.

Mr. HUDDLESTON. Well, it held definitely that it was a proper exercise of its police powers?

Mr. LOVETT. Of course.

Mr. HUDDLESTON. And was not an attempt to regulate interstate commerce. Now, if such a provision, a provision against consolidation of competing lines, is not an interference with the congressional right to regulate interstate commerce, manifestly Congress can not take any action which would involve that power.

Mr. LOVETT. It has been held, in cases that fill the books, almost, that State action with respect to its corporations engaged in interstate commerce, and State action even affecting interstate commerce, was not contrary to the Constitution in the absence of legislation by Congress. But whenever Congress exercises the power, the State control falls. The State is subordinate to them, though it retains its power over the corporation in other respects. But it can not do anything to impair the action of Congress.

Mr. BURTNESS. Mr. Chairman, I should like to pursue this very interesting subject with one or two questions. As I recall the so-called commerce clause of the Constitution, the power that is given to Congress, and which it may exercise exclusively if it so desires, is that of regulating commerce between the several States and with foreign countries; and I emphasize the word "regulate." Now, this is the thought that occurs to me: that in the power of regulation you may control to the extent of negating, if need be, any powers that may be given by the State by granting a charter to a corporation, but it seems to me that involved in this bill there is possibly an attempt on the part of Congress to enlarge the corporate power granted by a State to a corporation; that is, to enlarge specifically the charter powers of the corporation; and with reference to those powers it seems to me that they originate purely with the State. I was wondering whether that is not going a good deal further than the court has gone.

Mr. LOVETT. You give the word "regulate" a construction that is entirely too narrow.

Mr. BURTNESS. Possibly.

Mr. LOVETT. I have argued at times about the restrictive meaning of that word. But I could cite you to some very eloquent language of the Supreme Court to the effect that that word means a good deal more than the mere regulation of the business of a corporation; the rates and things like that.

Mr. BURTNESS. Oh, yes.

Mr. LOVETT. But it regulates all the instrumentalities of interstate commerce.

Mr. BURTNESS. Surely.

Mr. LOVETT. It can create corporations. That does not fall within that narrow construction.

Mr. BURTNESS. There is no question about that.

Mr. LOVETT. It can create corporations and it can add to the existing agencies the corporate powers that it could confer upon an original corporation. In the case that I have cited here, the Central Pacific, it gave to the Central Pacific Railway Co., the power, and created it as its agent, to build the railroad from Sacramento to Great Salt Lake; and as the Congress did not deal with the question of taxation there, the court said that that was a Federal power. To use the exact language of Justice Bradley in that case, Congress endowed the State corporation with these powers and utilized it as an agent, as it had a right to do, and those powers are not subject to taxation by the State without the consent of Congress.

Mr. BURTNESS. To be specific, if I understand you correctly, you feel that the power to regulate on the part of Congress, if Congress sees fit to exercise it, goes so far as to increase the charter powers of a corporation created by the State, so that an act that might be performed by that State corporation later, even though ultra vires under its State charter, would not be held to be ultra vires after Congress exercises the regulation?

Mr. LOVETT. I go even further than that. I say that Congress in the exercise of its powers under the commerce clause can take over all of these corporations, and can say that hereafter they shall not be State corporations, but that they shall be Federal corporations, just as they did in the case of the banks.

Mr. BURTNESS. Of course, as a practical proposition, I think that possibly even under this bill we might get away from these theoretical objections by assuming that the procedure used would be that of creating, in the case of consolidations, a new corporation rather than giving to some State corporation additional powers to those granted by the State charter.

Mr. LOVETT. All these State corporations were created with the knowledge, or it may be conclusively presumed with the knowledge of the State and the people that created them that they were going to be subject to Congress and to the full exercise of all the powers that Congress has under the commerce clause; they launched into interstate business, and they are engaged in it to-day. That subjected them to the power of Congress; and even if they had not engaged in interstate commerce, if they had carefully refrained from engaging in interstate commerce, my judgment is that Congress could utilize them and make them engage in it, because they are existing agencies.

Mr. BURTNESS. I do not think there is any question about their utilization, and things of that sort; but the thing that bothers me is the extension of their powers by legislation.

Just one question and I am through; and that is with reference to these matters of valuation of the weak lines. You have emphasized time and again that these weak lines might be absorbed by the larger roads if they would come in on a fair valuation. But, after all, the fact is that many of these weak lines on that basis have no valuation at all, I take it. What, for instance, would be the value of this line that your company ran for three years and lost $10,000 each year? Has it any value?

Mr. LOVETT. It has no value, but the taking over of it might be justified at the price, perhaps, of the material in it, as a concession or as a recognition by the railroad of a necessity for a railroad there. It has been the policy—I presume it is the policy of all railroad companies, but it has certainly been the policy of the Union Pacific for a number of years to try to supply the territory which it serves with all the railroad facilities needed. We have built many branches that are not of themselves profitable. It might be—this may sound a little inconsistent—but if this railroad were not already

there, and there was a reasonable request and a necessity for transportation down there, we might, as the only large line in the locality, undertake to provide some branch line there. But as the railroad is already there we do not feel obliged to have it unloaded on us.

Mr. BURTNESS. But if these shorter lines are taken over at their fair value, then I take it that it would be unreasonable to fix rates for the consolidated company or for the acquiring company on a basis that would give the company a fair return upon the original cost, or anything of that sort, of the company taken over?

Mr. LOVETT. Well, that depends on what is finally settled as the law on that subject. If it is finally settled—and I do not believe it will be—that replacement value is the sole test of value, I think it is very likely that we would take over such line, because it would absorb some of the excess earnings that would be added to our property. If, however, its real value is the test, then it would not be very attractive to us, though we would probably take it over at its real value.

Mr. NELSON. Judge, is not the situation that you have been describing as regards the relation between the Federal Government and the States exactly analogous to the relation between the States and municipalities? That is, a municipality may enter into a contract with some public service corporation, which, outside of the exercise of the powers of the State, is a perfectly valid contract and a vested right, but the State, in the exercise of its police power, through its public service commission, can absolutely set that contract aside. Now, is not that analogous to the inherent right of the Federal Government to regulate commerce? The Federal Government, so to speak, delegates it to the State until it is necessary for the Federal Government to assert that right, and then, instead of taking away a vested right, as in the case of the State and the municipality, it simply asserts it?

Mr. LOVETT. It is not exactly analogous, because the State has complete power over the municipalities. It may abolish them or do whatever it chooses with them.

Mr. NELSON. But the Federal Government has the power to regulate commerce.

Mr. LOVETT. The Federal Government has power only over a limited number of subjects. One of those subjects is interstate commerce, and that power is unlimited.

Mr. NELSON. As to that one, it has the same power.

Mr. LOVETT. These decisions of the Supreme Court on that particular point have not always been entirely consistent, if I may be allowed to say so. Many decisions have held that that power could be exercised by the States until exercised by Congress, when it was superseded. In other cases they hold that any State regulation that amounts to regulation of interstate commerce is invalid. But it is clear that the State's power over its own corporations is complete within the constitutional limits until Congress acts with respect to interstate commerce, and then it supersedes those regulations.

I am really sorry that I did not anticipate this discussion, or I would have tried to be better prepared with some decisions to cite. I hope that Colonel Thom will, as I know he can, satisfy the committee when he comes to be heard.

Mr. BURTNESS. I suggest, Mr. Chairman, that when the judge revises his remarks he then be permitted to file such references, with brief comments thereon, as he desires, in order to clarify the situation.

The CHAIRMAN. Surely. He can supplement his statement in any way he sees fit.

Mr. CROSSER. One more question along the line that I pursued before. Following your reasoning on the proposition that the National Government has the right to add, so to speak, to the life given a corporation by the State, on the theory that it is essential to interstate commerce, you say also, of course, that an individual authorized by a State can be protected in the same way by the National Government, or, rather, may have his powers increased. What would you say as to this rather amusing illustration: that some person should be regarded as very important to the successful operation of a railroad system, because of his ability and so on, and yet he had been condemned to death by the State for murder or something of that kind. You say that you could not kill him?

Mr. LOVETT. Would that be a regulation of interstate commerce?

Mr. CROSSER. That is what brings up the whole question. It is rather an extreme illustration, but does not that draw the distinction? After all, is it not the instrumentalities that govern?

Mr. LOVETT. It all comes to that; is it a regulation of commerce?

Mr. CROSSER. Well, I would like to get your answer to that question.

Mr. LOVETT. I should not think it would be.

Mr. CROSSER. He might be much more valuable as an operating agency than any corporation that could be created.

Mr. LOVETT. I think, if Congress should determine that he was essential to interstate commerce, and that therefore he should not be executed, you might stir a great question, if you could imagine Congress taking action of that sort.

Mr. CROSSER. Then the police power of the State is a rather questionable proposition?

Mr. LOVETT. The police power of a State is subject to the power of Congress with respect to interstate commerce. That has been settled by many decisions.

Mr. SHALLENBERGER. I think that we can understand, that the railroads and the railroad attorneys and those who speak for the carriers are in favor of this bill and in favor of the general policy of consolidation. But through the bill run terms which indicate that the public welfare, or the public interest, is to be considered also. The public having no representative here to speak for it, what do you say to the idea that States having in their constitutions declared against consolidations, and many of them having declared in State laws against consolidations, that public opinion apparently so far has been against this policy? Are we right in assuming that position as Congressmen, with no other advice from the public?

Mr. LOVETT. I can not answer as to how a Congressman should perform his duty; but I should say that the fact that these provisions exist in constitutions, many of them very old, is of no more significance than the fact that up to February 28, 1920, Congress had laws on its books expressly prohibiting what it is now trying to compel. So I take it that that act reflected public sentiment; and this proposed legislation, in this bill and in the Senate, is designed,

so far as I can understand, to make effective and carry out to a greater extent than is now possible the very purposes of the existing law.

Mr. SHALLENBERGER. The point that I wanted to ask your opinion about was whether or not the pressure for this bill has come from the carriers or from the people? Whose interests are being served?

Mr. LOVETT. I think in promoting the welfare of the carriers you are promoting a very great public interest.

Mr. SHALLENBERGER. I think Doctor Duncan testified here, in his interesting speech, that the Pennsylvania Railroad and the New York Central had been consolidated out of many hundreds of separate, independent corporations in the process of their evolution. Does not that indicate that there is very great freedom of action now, under the present law, and when the public welfare and the public interest warrant it?

Mr. LOVETT. I tried to indicate yesterday that under the existing law I do not think there is the freedom that is necessary; because, while designed to bring about consolidations, it has been impossible to effect them until the commission completes the task that was assigned to it.

Mr. SHALLENBERGER. The bill declares as to public policy, that the principal idea is to enable weak lines to be absorbed by strong lines. Do you think that is the real principle or policy behind this bill? Is it not rather to permit strong lines, if necessary, to be consolidated into larger and more concentrated groups than at present? Is not that the real purpose of the bill?

Mr. LOVETT. As to the purpose of the bill, the author can speak better than I can; but I should say, speaking for the railroad interests as far as I am aware of their views, but specifically only for that which I represent, I believe the purpose of the bill, and of similar legislation, is to strengthen the position of the railroads of the country by affording means of combining the weak roads with the strong. I think that is the primary purpose of the bill; and also to revive railroad consolidations which were practically suspended when the antitrust act was passed in 1890; because there are many consolidations that ought to be effected, in the public interest, that do not involve weak lines. It would be to the interest of the public to have that done; but it has not been possible since 1890 because it was prohibited by the antitrust law.

Mr. SHALLENBERGER. Would the Van Sweringen consolidation be possible under this bill, though it was refused under the present law?

Mr. LOVETT. I never read either the application or the opinion of the commission in that case. I really do not know anything about it.

Mr. SHALLENBERGER. I have here a clipping taken from the financial statement in the Washington Post of this morning. In speaking of railroad securities, it uses this language:

> Many observers express preference for the rails, and have given among the various reasons the facts that operating ratios are declining, that crop prospects are excellent, that management of railroads is more efficient, that most of the railroad stocks are in the hands of strong banking groups, and, furthermore, that a number of very important railroad mergers are in prospect.

Is that a fair statement? Are there a lot of mergers of large groups waiting for the passage of this bill?

Mr. LOVETT. Not so far as I know.

Mr. SHALLENBERGER. Not as far as you know?

Mr. LOVETT. No.

Mr. SHALLENBERGER. If that were the fact, the passage of this act to facilitate the absorption of weak lines, would operate about as the present act does as to rates. Is it not a fact that our endeavors to make these weak lines earn a reasonable return have resulted to the advantage of lines such as the one of which you are the manager; that you have received larger earnings than you would otherwise, because of the fact that the law and the Interstate Commerce Commission attempted to make these weaker lines pay?

Mr. LOVETT. I do not understand that to be the situation. I do not think that the Union Pacific is receiving, under the existing law, as much as it is entitled to for the transportation service that it performs. I take it that the Interstate Commerce Commission, whatever the law is, is not going to make rates that will ruin the railroad interests of the country simply to reach the strong roads. I think, however, that there are many of the strong roads that could live under rates that would ruin the majority of the railroads of the country. I do not believe that the commission would ever make such rates, because it seems to me that it would be much like burning down the barn to kill a few rats. I do not think there would be such legislation. I do not think we are menaced by that.

To go a step further, I suppose it would be possible to amend the Constitution of the United States so as to confiscate all the railroads of the country; and yet I do not believe that will ever be done. I do not believe the people would be so unwise as to do that. For the same reason I do not believe the commission is going to make rates that will ruin the railroad interests of the country simply because a few railroads are earning more than some people think they should.

Now, speaking for a moment about the Union Pacific, to which you have referred, it pays a 10 per cent dividend, which makes it very conspicuous; but much of that—about $16,000,000 of its net earnings used in paying dividends; practically almost one-half of its net earnings—comes from investments that were made during Mr. Harriman's administration and which have been conserved, if I may say so, since; and from its railroad properties, taking its system as a whole, its earnings are not, I think, excessive upon any fair value of its property.

Mr. SHALLENBERGER. Would you admit that these weak and poorly managed lines of railroad which are attempted to be benefited under the increased rates granted under section 15–a are, in a certain sense, a weight or a millstone upon the railroad system as a whole? In other words, if all these railroad lines were managed with the efficiency and the honesty and the economy with which your great system has been managed, or the C. B. & Q., or the Santa Fe, or other lines that have made, through all these periods, reasonable and good returns to their investors, do you not think that if we had had that sort of management throughout the whole system we might have had a better rate for the public than we are getting now?

Mr. LOVETT. I do not think so. The weak lines have, so far as I know, been very well managed. I do not know of any weak line that has been mismanaged.

Mr. SHALLENBERGER. Then we will say that the building of them was uneconomical; is that correct?

Mr. LOVETT. The building of them was a mistake in many instances; or they have served the purpose for which they were built.

Mr. SHALLENBERGER: The attempt that we made through section 15a and the recapture clause has apparently failed to remedy this situation, which I believe exists, whether you will admit it or not; and now we are attempting under this consolidation bill, as I understand it, to reach it in another way; to have your strong lines, which you say do not pay an excessive return, absorb these other lines as a matter of duty or obligation to maintain an adequate transportation system. So this bill is ostensibly an attempt to accomplish the same thing.

Mr. LOVETT. Governor, if I may say so, I think you have misread the pending bill. I think you have not correctly understood it. I do not understand that the purpose of it is anything except to make effective what was intended by the former and the existing law.

Mr. SHALLENBERGER. To make something lawful that is unlawful now?

Mr. LOVETT. No, it is not unlawful; but to confer authority that does not otherwise exist in many of the corporations.

Mr. SHALLENBERGER. It is unlawful for them to exercise that authority at present.

Mr. LOVETT. Well, in the sense that it would be ultra vires. It is a debatable question whether it is unlawful; but they have not the corporate power. Now, the purpose of this bill is to make effective the policy that was declared by the existing law, and to provide for the unification of railroads by other methods, and a permanent and final unification, without holding to the strict method of consolidation which will not be effective until the Interstate Commerce Commission performs a task that is well-nigh impossible. That is the whole substance and effect of this bill, as I understand it.

Now, if I may go back a moment to your statement about the attitude of the railroads with reference to this measure, so far as I am personally concerned, and the railroads that I represent, I do not care whether Congress passes the law or not.

Mr. SHALLENBERGER. I gathered that. I think your statement has been very fair, and I am not criticizing it at all. I am just trying to get your point of view in regard to the matter.

Mr. LOVETT. Yes; I understand that. But what I do mean to say is that if it is the policy of Congress, as heretofore declared under the existing law, to bring about these consolidations, legislation, to the effect of this bill, or the bill in the Senate, is necessary; otherwise the corporations are without power to do it.

Mr. SHALLENBERGER. Let me touch on just one other subject, and then I shall be through. I call your attention to the fact that the words "economical" and "honest" do not appear in the section declaring the policy of Congress in this bill, but that in the present act the language is that the administration of the railroads must be efficient, honest and economical, and that they must maintain an adequate transportation system. Now, the word "economical," as interpreted by the dictionary, has a very definite meaning, and it is different from "efficient." I will not raise the question of honesty.

Mr. LOVETT. I hope you will, if there is any basis for it, so far as our property is concerned.

Mr. SHALLENBERGER. No; I am not raising it; but it might be raised. But the word "economical" implies fair, prudent, provident management; not wasteful or extravagant; frugal; saving; and those things are essential in order that the public may have the lowest rate possible consistent with allowing you a fair return, which you have stated, as I understood it, you thought was a fair statement of the public's interest in the railroads.

I have before me a statement just published by your railroad company, which shows that this year your company is earning more money than it earned last year, and that your expenditures for maintenance of way and maintenance of equipment for March and April are practically a million dollars more than they were a year ago, and not withstanding that additional reduction from your net earnings, still you show a very creditable and favorable increase in your net operating income. Now, that money is spent out of your earnings, of course, to keep up that very wonderful roadbed which you have; and I can see why it would be important, perhaps, to the railroad to make it even more wonderful than it is, because I know that it is the model for the world. But whether or not it is economical is another question; and the rates which the Interstate Commerce Commission, under direction of Congress, authorizes you to charge the people are to allow you a fair net return upon capital investment. Now, if you are permitted to spend $12,000,000 more this year than you spent last year—not for the improvement or the economy of the railroad so far as the public is concerned—that is, as I figure it, 5 per cent interest on $240,000,000, and it becomes a very serious question whether or not the Interstate Commerce Commission, under the law, might permit it. Is not that true?

Mr. LOVETT. But, Governor, did you happen to notice in that statement the further statement that the total expenditures for maintenance of way during the year would not exceed those of last year?

Mr. SHALLENBERGER. I saw that; but I am asking you this: Is it not true that if you can spend a million dollars you can spend two million? You are making it. Your railroad is operating very successfully and very profitably. The point that I am raising is that if we eliminate this question of economy we have taken away from the Interstate Commerce Commission a very direct mandate that we gave them before, so far as such operations as that are concerned.

Mr. LOVETT. The very circumstance to which you call attention, this additional expenditure, was in the interest of economy, for this reason: Last year, on account of the low earnings in the beginning of the year, to some extent, the managers of the property did not do the work in the spring and early summer, when business was light, and on a consideration of that situation it was decided that they should do the work when it could be done most economically. We can do maintenance on the Union Pacific in the spring months, when the business is very light, and are doing it this year, because there are not so many trains, and the men can work on the track, whereas if we wait until the earnings begin to increase, in August, September, and October, as we did last year, the men, instead of working on the track, are standing by more of the time, watching the trains go by.

Now, in the interest of economy we have undertaken this year to do our principal maintenance work in the first half of the year, and then

99790—26——9

shut down when the business gets heavy on the line. That is purely in the interest of economy. If anybody can suggest any wise economy on the Union Pacific, I would be very glad to have it.

Mr. SHALLENBERGER. Judge, I thoroughly agree with everything you have said. I do not dispute it at all. But I am raising this question: As I understand the Interstate Commerce Commission, it is an arm of Congress, and they consider very definitely what we say. Now, I understood you to say that out of those excess earnings which are supposed to be regulated, or attempted to be regulated, under the recapture clause, railroads such as yours, for example—railroads with a good big surplus earning—might elect to spend more money on their right of way, improvements, etc., where they would never get it back, or they might take over one of these cheap lines and operate it with that money that they would otherwise have to pay to the Interstate Commerce Commission fund. Does not that raise the question right away whether or not, if we remove this question of economy do you hold that you have a right to spend an unlimited amount, under the law at present, for betterments or maintenance or the absorption of one of these other roads?

Mr. LOVETT. Not at all. I also stated, Governor, in the statement to which you refer that the commission had been given by Congress very complete and ample power with respect to the supervision of these expenditures in connection with the recapture clause. Now, the commission, before it determines as to the excess earnings of any railroad, will scan very closely all of the expenditures for maintenance, which are reported to the commission under oath, on the forms that they prescribe, and which they can verify upon examination of the books, and if they find that those expenditures have been excessive or have been unreasonable in any way, they will charge them back. They have that power. They exercised it, I think, in a number of instances under the act that gave them the right to determine the net earnings during the guaranty period of six months following the war.

Now, if the expenditures are needed on a railroad that has the money; if it is necessary to spend that money in the interest of safety or of greater efficiency, and the manager has it, he will spend it, taking his chances on the commission charging it back to him, and fight that question out before the commission. But it is either that or to say that the commission shall determine in advance what shall be spent for maintenance. If we were not interested in our road, we would be quite willing for the commission to assume that responsibility. I fancy no commission would like to undertake it. I think it would be very dangerous to try to determine, in Washington, how much ought to be spent on some other railroad that is far away, as against the judgment of experienced railroad men. They can, after the expenditures are made, say whether or not they shall be deducted from net earnings or charged back.

Mr. SHALLENBERGER. Has the Interstate Commerce Commission practiced any general charging back or refusing to accept the returns of the railroads?

Mr. LOVETT. I think they did so in some instances under the guaranty clause that existed for six months, but I would not like to speak definitely about that.

Mr. SHALLENBERGER. The reason I ask that is that I understood one of the commissioners here to say that they had not been able to inform themselves sufficiently to exercise that right, if they had it. I understood one of the commissioners to say, in connection with this Hoch-Smith resolution when the point was raised, that some of the railroads were doing this thing that I pointed out—I listended very attentively and made a note of it—that he thought, as you said, that the commission could not take the time, etc., to go into these statements; in other words, that they accepted the railroad reports.

Mr. LOVETT. I do not know what the commission has done actually; but I know they have the power under the law with respect to the guaranty period, and they also have the power under the recapture clause. To what extent they have exercised that power I am not able to say.

The CHAIRMAN. We are very much obliged to you indeed, Judge.

The committee stands adjourned until 10 o'clock to-morrow morning.

NOTE.—At the conclusion of my testimony the chairman and several members of the committee requested that I add to the record of my testimony references to cases in the Supreme Court which I regarded as supporting the views I had expressed respecting the powers of Congress, and I accordingly append the following:

1. That Congress is free to utilize State corporations and endow them with corporate powers in addition to those granted by the State is shown by California *v.* Central Pacific R. R. Co. (127 U. S. 1). That case concerned the right of the State to tax franchises granted by Congress to a State corporation. The Central Pacific Railroad Co. of California had been organized under the laws of California to construct and operate a railroad from Sacramento to the eastern boundary of the State. Thereafter by the first of the Pacific Railroad acts (12 Stats. 489) Congress authorized the construction of a line of railroad from the Missouri River to the Pacific Ocean, and by section 9 thereof provided that "The Central Pacific Railroad Company of California, a corporation existing under the laws of the State of California, are hereby authorized to construct a railroad and telegraph line from the Pacific coast, at or near San Francisco, or the navigable waters of the Sacramento River, to the eastern boundary of California, upon the same terms and conditions in all respects as are contained in this act for the construction of said railroad and telegraph line first mentioned," etc. By amendatory act (13 Stats. 356) the Central Pacific Railroad Co. of California was authorized to continue its road eastward until it should meet and connect with the Union Pacific Railroad. The Supreme Court said (127 U. S. at page 39):

"It can not at the present day be doubted that Congress, under the power to regulate commerce among the several States, as well as to provide for postal accommodations and military exigencies, had authority to pass these laws. The power to construct, or to authorize individuals or corporations to construct, national highways and bridges from State to State is essential to the complete control and regulation of interstate commerce. * * * Of course, the authority of Congress over the Territories of the United States, and its power to grant franchises exercisable therein, are, and ever have been, undoubted. But the wider power was very freely exercised, and much to the general satisfaction in the creation of the vast system of railroads connecting the East with the Pacific, traversing States as well as Territories, and employing the agency of State as well as Federal corporations." The opinion in United States *v.* Stanford (161 U. S. at p. 433), commenting on California *v.* Pacific Railroad Co., said: "The relations between the California corporation and the State were of no concern to the National Government at the time the purpose was formed to establish a great highway across the continent for governmental and public use. Congress chose this existing artificial being as an instrumentality to accomplish national ends, and the relations between the United States and that corporation ought to be determined by the enactments which established those relations." In Oregon Short Line *v.* Skottowe (162 U. S. at p. 494) it was said: "Congress has frequently conferred upon railway companies, existing under Territorial or State laws, additional corporate franchises, rights, and privileges, and its right to do so can not be doubted." See also Wilson *v.* Shaw (204 U. S. 24).

2. The commerce clause confers upon Congress complete power in the regulation of interstate commerce, limited only by other provisions of the Constitution

itself. Thus, Chief Justice Marshall, in Gibbons *v.* Ogden (9 Wheat.), said at page 196, referring to the power to regulate interstate commerce: "This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution." Again, in Brown *v.* Maryland (12 Wheat.), Chief Justice Marshall, considering the extent of the power to regulate commerce, said at page 446: "This question was considered in the case of Gibbons *v.* Ogden (9 Wheat. 1), in which it was declared to be complete in itself and to acknowledge no limitations other than are prescribed by the Constitution. The power is coextensive with the subject on which it acts and can not be stopped at the external boundary of a State, but must enter its interior."

3. The power to regulate interstate commerce extends not merely to the commerce itself but to all the agencies and instrumentalities employed in or appropriate to use in such commerce. Mr. Justice Field said, in Gloucester Ferry Co. *v.* Pennsylvania (114 U. S. at p. 204): "The power also embraces within its control all the instrumentalities by which that commerce may be carried on and the means by which it may be aided and encouraged. The subjects therefore upon which the power may be exerted are of infinite variety." And in Wilson *v.* New (the Adamson Act case, 243 U. S.), Chief Justice White said at page 349: "That the power to regulate also extends to many phases of the business of carriage and embraces the right to control the contract power of a carrier in so far as the public interest requires such limitation has also been manifested by repeated acts of legislation as to bills of lading, tariffs, and many other things too numerous to mention. Equally certain is it that the power has been exercised so as to deal not only with the carrier, but with its servants and to regulate the relation of such servants not only with their employers but between themselves. Illustrations of the latter are afforded by the hours of service act, the safety appliance act, and the employers' liability act." See also United States *v.* Ferger (250 U. S. at p. 203).

4. In the exercise of its power to regulate interstate commerce Congress is free to choose such methods and select such agencies as it deems best adapted to the purpose. This is illustrated by the cases above cited concerning Federal grants of power and authority to State corporations. The following references state the proposition in its broadest aspect: Chief Justice Marshall in M'Culloch *v.* Maryland (4 Wheat. at p. 421) said: "We think the sound construction of the Constitution must allow to the National Legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional." See also Interstate Commerce Commission *v.* Brimson (154 U. S. 447, 472); Ruddy *v.* Rossi (248 U. S. 104, 107).

5. The power to regulate interstate commerce is paramount to any power possessed by the States and any State interference is invalid whether by legislative act, municipal ordinance, executive order, or constitutional provision. It was said in the Minnesota Rate Case (230 U. S. at p. 399): "This reservation (as to internal commerce) to the States manifestly is only of that authority which is consistent with and not opposed to the grant to Congress. There is no room in our scheme of government for the assertion of State power in hostility to the authorized exercise of Federal power. The authority of Congress extends to every part of interstate commerce and to every instrumentality or agency by which it is carried on; and the full control by Congress of the subjects committed to its regulation is not to be denied or thwarted by the commingling of interstate and intrastate operations. This is not to say that the Nation may deal with the internal concerns of the State as such, but that the execution by Congress of its constitutional power to regulate interstate commerce is not limited by the fact that intrastate transactions may have become so interwoven therewith that the effective government of the former incidentally controls the latter. This conclusion necessarily results from the supremacy of the national power within its appointed sphere."

In Wisconsin Railroad Commission *v.* C., B. & Q. R. R. Co. (257 U. S.), Chief Justice Taft said at page 590: "Congress as the dominant controller of interstate commerce may, therefore, restrain undue limitation of the earning power of the interstate commerce system in doing State work. The affirmative power of Congress in developing interstate commerce agencies is clear. * * * In

such development it can impose any reasonable condition on a State's use of interstate carriers for intrastate commerce it deems necessary or desirable. This is because of the supremacy of the national power in this field." In Leisy *v.* Hardin (135 U. S. at p. 108), it was said: "And while, by virtue of its jurisdiction over persons and property within its limits, a State may provide for the security of the lives, limbs, health, and comfort of persons and the protection of property so situated, yet a subject matter which has been confided exclusively to Congress by the Constitution is not within the jurisdiction of the police power of the State, unless placed there by congressional action." In Oregon-Washington Railroad & Navigation Co. *v.* Washington, decided March 1, 1926, not yet reported, an embargo of the director of agriculture of the State of Washington, acting under the authority of a State statute, against the transportation into Washington of alfalfa hay from certain sections of other States believed to be infected with alfalfa weevil, was held invalid on the ground that the Federal Secretary of Agriculture is invested by Federal statute with power as to quarantine in interstate commerce and that Congress has, therefore, assumed control of the whole subject matter. Chief Justice Taft said: "In the relation of the States to the regulation of interstate commerce by Congress there are two fields. There is one in which the State can not interfere at all, even in the silence of Congress. In the other, and this is the one in which the legitimate exercise of the State's police power brings it into contact with interstate commerce so as to affect that commerce, the State may exercise its police power until Congress has by affirmative legislation occupied the field by regulating interstate commerce and so necessarily has excluded State action."

In Colorado *v.* U. S., decided May 3, 1926, and not yet reported, the State complained of an order of the Interstate Commerce Commission authorizing the abandonment of a branch line of the Colorado & Southern, a corporation of that State, arguing that the charter of that corporation was a contract with the State by which the company assumed the obligation of providing intrastate service, that the extent and character of the intrastate service was the subject of regulation by the State and that the Interstate Commerce Commission could not relieve the corporation of its primary duty to furnish intrastate service. This argument was rejected by the Supreme Court, which held that the performance of unprofitable intrastate transportation service might deplete the resources of the corporation to the prejudice of interstate commerce and that Congress has the power to control intrastate commerce as a necessary incident of freeing interstate commerce from unnecessary burdens, obstructions, or unjust discrimination. The court said: "Because the same instrumentalities serve both, Congress has power to assume not only some control but paramount control in so far as interstate commerce is involved. It may determine to what extent and in what manner intrastate service must be subordinated in order that the interstate service may be adequately rendered." See also the recent decisions holding invalid as a burden upon interstate commerce the State laws permitting suits against foreign railroad corporations not owning or operating railroads within the State by plaintiffs not residing therein upon causes of action arising elsewhere. (Davis, Director General *v.* Farmers Cooperative Equity Co., 262 U. S. 312; Atchison, Topeka & Santa Fe Ry. Co. *v.* Wells, 265 U. S. 101.) A provision in the constitution of a State which conflicts with the Federal Constitution is invalid equally with an act of the legislature of the State so conflicting. (R. R. Co. *v.* McClure, 10 Wall. at p. 515; White *v.* Hart, 13 Wall. at p. 652; Cooley's Constitutional Limitations, 7th Ed., at p. 62.)

6. A railroad is private property. (I. C. C. *v.* Chicago Great Western, 209 U. S. at p. 118; Northern Pacific Ry. *v.* North Dakota, 236 U. S. at p. 595; Great Northern Ry. *v.* Minnesota, 238 U. S. at p. 346.)

R. S. LOVETT.

(Thereupon, at 12.30 o'clock p. m., the committee adjourned until to-morrow, Thursday, May 27, 1926, at 10 o'clock a. m.)

RAILROAD CONSOLIDATION

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Thursday, June 3, 1926.

The committee met at 10 o'clock a. m., Hon. James S. Parker (chairman) presiding.

The CHAIRMAN. The committee will please come to order. Commissioner Hall.

STATEMENT OF HENRY C. HALL, COMMISSIONER, INTERSTATE COMMERCE COMMISSION

Mr. HALL. Mr. Chairman and gentlemen of the committee, for the record I should perhaps state that I am a member of the Interstate Commerce Commission and have been since 1914.

Some weeks ago the commission received a draft of H. R. 11212, known as the Parker bill, to promote the unification of carriers engaged in interstate commerce and for other purposes, with the request from the chairman of the committee for the views of the commission upon that bill.

Those views were put into the form of a report addressed to the chairman under date of May 11. They were formulated by our legislative committee, of which former Congressman Esch is the chairman, but they were submitted to the commission in conference. The views therefore as embodied in that report, having received the approval of the commission, represent the views of the entire commission and not merely of the legislative committee.

Perhaps it would be appropriate at this time, Mr. Chairman, if I should present those views as thus formulated.

The CHAIRMAN. Was the report unanimous?

Mr. HALL. Unanimous; yes, sir.

The CHAIRMAN. That report was circulated.

Mr. HALL. That has been circulated, Mr. Chairman, but as I understand it, it is not in the record of this proceeding. I said "unanimous." I think that Mr. Commissioner Campbell was in the West at the time of this conference, but it reached his office and there has been no expression of a different view from him.

Mr. HUDDLESTON. May I suggest, as the committee has had that for 10 days already, would it not be just as well, instead of rereading it now, to devote the time to a further discussion of the bill?

The CHAIRMAN. I think that we can insert that in the record and save your reading it, because that report was distributed to the committee and every member of the committee has a copy of it.

Mr. HALL. Very well. Then this report signed by John J. Esch for the legislative committee, addressed to the chairman of this committee, and bearing date of May 11, is here offered for the record.

The CHAIRMAN. It is received and will be printed in the record as the views of the commission.

(The report referred to is as follows:)

Hon. JAMES S. PARKER, MAY 11, 1926.
Chairman Committee on Interstate and Foreign Commerce,
House of Representatives.

MY DEAR MR. CHAIRMAN: The legislative committee of this commission submits the following report upon H. R. 11212 in response to your request therefor dated May 1, 1926, and received May 4:

The views of the majority of the commission as to needed changes in the provisions of section 5 of the interstate commerce act in respect of consolidation of railroads were set forth in a letter dated February 4, 1925, addressed to the chairman of the Senate Committee on Interstate Commerce, and in a proposed amendment to section 5 transmitted therewith. These views are summarized on pages 13 and 14 of our thirty-ninth annual report to the Congress. They were further stated by Chairman Eastman, of this commission, in a hearing before that committee on January 22, 1926, at which a text of the proposed amendment was submitted as appearing on pages 39–66 of the print of hearings on S. 1870 herewith transmitted. On page 58 he summed up the recommendations of the majority of the commission and the desiderata of such amendment as follows:

Briefly, the bill—

1. Relieves the commission from its present duty of adopting a complete plan of consolidation.

2. Makes unlawful any consolidation or unification in any form, direct or indirect, except with the specific approval and authorization of the commission.

3. Gives the commission broad power to approve or disapprove such consolidations or unifications as may be proposed and to make such modifications and attach such terms and conditions prior to approval as it may find just and reasonable.

4. Specifically authorizes the commission to disapprove a consolidation or unification upon the ground that it does not include a carrier that ought to be included and can be included upon reasonable terms.

5. Specifically authorizes the commission to make it a condition of any consolidation or unification that existing routes and channels of trade and commerce shall be maintained.

6. Authorizes the commission to utilize, in reaching its conclusions with respect to any consolidation or unification proposed, all records and other evidence heretofore taken and now in its files, under the terms of the section as heretofore enacted.

7. Modifies the provision which limits the capitalization of the consolidated corporation to the value of the combined properties, by enabling the commission to arrive at a value for this purpose either by utilizing the results of the valuation under section 19a or otherwise.

The bill opens the door to all consolidations or unifications of railroad properties that may be shown to be in the public interest. It does not attempt to force the process in any way, but permits it to develop naturally in the increasing light of experience, subject to the guidance of the commission.

The bill H. R. 11212 which you now submit so largely meets these desiderata, as well as the views expressed by or on behalf of other members of the commission, as to embody a betterment of existing law which is fully jusitfied by our experience and observation. The changes which we suggest for your consideration center around the provisions of this bill as to condemnation including the work assigned to this commission or a division thereof in connection with such condemnation. These provisions are found in sections 212 and 213 of the bill and are confined, as we understand, to condemnation of voting securities held by a nonassenting holder, and of property other than securities, or any right or interest in any such property, held or enjoyed without power of assignment or transfer.

As to securities, paragraph (1) of section 212 provides that any holder of a voting security issued by any carrier a party to the plan, who did not vote for the adoption of the plan, may, within 90 days after the meeting at which the

holders of voting securities consented thereto, notify such carrier in writing that he does not assent, and further provides that any such holder who does not so notify the carrier within that time shall be held to have consented to the order. This does not adequately provide for the case of a holder who is legally incapacitated from acting for himself and has no legal representatives. The courts would doubtless hold that such a holder can not effectually consent, or refuse assent, or notify the carrier within the time limited. We suggest a provision to the effect that such legally incapacitated holder may give the notice within 90 days after removal of his incapacity by the appointment of a legal representative or otherwise and thereby become entitled to the relief provided for nonassenting holders. This suggestion is drawn from a statute of Massachusetts providing for the consolidation of the Boston Elevated and West End Street Railway Companies, extract from which is attached, Exhibit A.

This statute also provides that for the purposes of valuation, purchase or condemnation of nonassenting shares the value of the shares shall neither be increased nor diminished by reason of the provisions of the act or by the consolidation therein provided for. It may fairly be said that the securities of a nonassenting holder should not be enhanced or depreciated in value by reason of a consolidation to which he objects, but since valuation is a judicial, and not a legislative, function it may be that neither court nor appraiser could be bound by such a statutory provision.

In section 213 the mode of exercise of the right of eminent domain in respect of such securities, or of property other than securities held or enjoyed without power of assignment or transfer, is prescribed. In paragraphs (1) and (3) of that section the corporation is authorized to petition the court designated for appointment of the Interstate Commerce Commission as a board of appriasers, but is not in terms authorized to petition for condemnation of the securities or other property. In subdivision (4) it is made the duty of the commission "or a division thereof" upon any such appointment to act as a board of appraisers. It would seem that the words "or a division thereof" should also appear in paragraphs (1) and (3) if they are to be retained in paragraph (4). Paragraph (4) further provides that while acting as a board of appraisers the commission shall have the powers and duties of a master in chancery. If this provision is to be retained, the words "or division" might well follow the word "commission."

These provisions raise the question whether the legislative intent is that the individuals constituting for the time being the commission or division thereof are themselves to perform all the duties of the board of appraisers and exercise all the functions of a master in chancery, or whether all the provisions of Title I, being the existing interstate commerce act, apply and the commission or division may perform its duties under this section 213 by and with the aid of its organized forces of examiners, engineers, accountants, and analysts, especially those attached to our bureau of valuation and bureau of finance, to the extent that those forces are utilized in performance of our other duties under the interstate commerce act. It is hardly necessary to say that performance by the persons constituting the commission or a division thereof of all the duties which would fall to such a board of appraisers would constitute such an addition to their duties under existing law as to be practically impossible of fulfillment. We suggest express incorporation by reference of the provisions of Title I, the substitution of the designation "commissioners" for that of board of appraisers, and the elimination of the provision that they shall serve as a master in chancery.

Further reason for this elimination is to be found in the query which we now raise as to the provision of this bill that condemnation shall be by a suit in equity. Without assuming in this report to express an opinion on a matter of law it is not inappropriate to refer to the prevailing view that proceedings in condemnation are proceedings at law rather than in equity, usually governed by statute, or at least special proceedings in which the right to trial by jury is not disregarded. The Supreme Court has expressed the view that condemnation proceedings are proceeding at law and not in equity, a doctrine which has been repeatedly adhered to by other Federal courts, and it may be that the Supreme Court would not be controlled in its view of such a proceeding by what is here enacted. Omission of the words "in equity" in line 13 of paragraph (4) and lines 2 and 7 of paragraph (5) would thus seem to us desirable and omission of the word "other" in lines 4 and 8 before the words "suits in equity." It will be observed that in Exhibit A provision is made for trial by jury if claimed. Similar provision is made in section 17 of a Massachusetts statute approved June 1, 1915, providing for consolidation of the railroad companies constituting the Boston & Maine system (Exhibit B attached), and in section 52 of Part III of the Massachusetts

99790—26——10

General Railroad and Railway Law of 1906 (Exhibit C attached). It may be noted that in each of these statutes special provision is made for a holder of shares who is incapacitated from acting and has no representative.

We appreciate the great advantage of having practice, pleadings, forms, and modes of proceedings prescribed by the Supreme Court, as are equity rules, with resulting relief from obligation to acquaint ourselves with the practice, pleadings, forms, and modes of proceedings obtaining in the several States of the United States and the District of Columbia, and trust that this provision can be retained if the commission or its divisions are to take on the added burden of serving as officers of a court.

The duties laid by the bill upon the commission in respect of plans for unification which may be submitted by carriers would constitute in and of themselves a heavy but necessary burden in addition to the duties already laid upon us by law. From the point of view of men who must endeavor to perform all their duties we can not but deprecate the further addition of the work of appraisers, whether the work be done by our forces under our direction or by commissioners individually. Even with the aid of our forces, if expressly authorized in the bill, it is not possible at this time to estimate in terms of time, men, and money what this addition would mean. We urge that if consistent with the legislative purpose these functions of appraisers or commissioners in condemnation proceedings be left, as in the Massachusetts statutes cited, to commissioners to be designated by the respective courts. If this is not done or can not be done, Congress should have in mind that discharge of these functions will necessitate additional appropriations for our use in amounts not yet to be estimated and may interfere with or seriously retard our other work. Further, if the functions of appraisers in condemnation proceedings are to devolve upon us, whether with or without the aid of our forces, it is desirable that, in so far as possible and consistent with the jurisdiction of the Federal district courts, the practice, forms, and modes of proceedings in arriving at values shall accord with our existing practice, forms, and modes of proceedings, especially those devoloped in connection with the work of our bureaus of valuation and finance.

Subject to these comments and some detailed suggestions noted in the accompanying list the legislative committee is unanimous in reporting approval of the bill and expressing the earnest hope that it may speedily pass and thereby relieve the commission from the existing mandate of law that it put out as soon as may be a complete plan of consolidation.

This report has been considered by the commission and has its approval.

Respectfully submitted.

JOHN J. ESCH,
For Legislative Committee.

LIST OF MODIFICATIONS OF H. R. 11212 SUGGESTED BY THE LEGISLATIVE COMMITTEE OF THE INTERSTATE COMMERCE COMMISSION

Sheet 1. In the title insert the words "or foreign" after "interstate."

Sheet 2, line 16. Omit the words "including sleeping-car companies and express companies." It is not apparent why provision should be made for consolidation of such companies with one or more railroad companies.

Sheet 5, line 15. Substitute "boards" for "board."

Sheet 7, line 13. Omit comma after the word "declared."

Sheet 8, lines 22–25. Insert express authority to holders of voting securities to vote on adoption of the plan. Voting securities as defined on sheet 2, lines 22 to 24, include all outstanding shares of stock whether or not such shares have voting privileges. That power may be implied in the provisions of paragraph (3) of section 208 but as in the case of shares without voting privileges it does not inhere in such a holder under the corporate organization, any doubt might well be resolved by express grant in this bill. Also specify number of votes in respect of each security, e. g., one vote for each $50 share or $1,000 bond.

Sheet 9, line 2. Omit "stockholders'." The meeting at which adoption of such a plan is voted on will not be confined to stockholders.

Sheet 10, line 17. After "necessary" insert "or appropriate," as in line 12 on sheet 11.

Lines 19–22. Substitute for these lines the words "such plan or acquisition in accordance with such order or any supplemental order of the commission."

EXHIBIT A

EXTRACT FROM MASSACHUSETTS STATUTE PROVIDING FOR THE CONSOLIDATION OF THE BOSTON ELEVATED AND WEST END STREET RAILWAY COMPANIES

Sec. 6. Any stockholder of the West End Street Railway Company who owns any share or shares of its stock, the certificates evidencing which are stamped "nonassenting," as above provided, may at any time between January one, nineteen hundred and twenty-two, and April one, nineteen hundred and twenty-two, request that his said shares be valued as hereinafter provided, and the value thereof shall in such case be paid, tendered, or deposited to or for the account of such holder in the manner following:

The stockholder may file a petition in the supreme judicial court within and for the county of Suffolk setting forth the material facts, and asking that the value of his shares may be determined. Thereupon, and upon such notice to all parties concerned as it may deem proper, the court shall pass an order requiring the certificate or certificates evidencing such shares, and duly endorsed, to be deposited with the clerk of the court, and shall appoint three commissioners to ascertain and report the value of the shares. The report shall be made to the court as soon as is practicable, and after due notice to the parties in interest, shall be confirmed by the court unless some error of law be made to appear upon the face of the report in which event it shall be recommitted to the commissioners with such order as the court may make, or unless either of the parties to said proceedings shall claim a trial by jury, in which latter event the court shall order the question of the value of the shares to be tried and determined by a jury in the superior court in the same manner in which other civil cases are tried in that court. Any stockholder who holds shares the certificates evidencing which are stamped "nonassenting," and who, during said period between the first day of January, nineteen hundred and twenty-two, and the first day of April, nineteen hundred and twenty-two, is legally incapacitated from acting for himself and has no legal representative, may file the said petition in the supreme judicial court within ninety days after the removal of such incapacity by the appointment of a legal representative or otherwise.

The Boston Elevated Railway Company shall be liable for, and shall pay all sums found due and payable to all holders of shares in the proceedings aforesaid, including such interest, cost, and expenses as the court may order and shall likewise furnish such security for the said payment as the court may order. For the purpose of the foregoing section, the value of the shares of the West End Street Railway Company shall neither be increased nor diminished by reason of the provisions of this act or by the consolidation herein provided for.

EXHIBIT B

SEC. 17. In case of any purchase, sale, or consolidation under the provisions of this act, unless such purchase be in accordance with the provisions of some order of court, every stockholder of the selling company shall be deemed to assent to the terms of the purchase or sale or consolidation, unless at the meeting called to consider such purchase or sale or consolidation such stockholder votes against such sale or consolidation and unless within thirty days after the date of the vote for such purchase, sale, or consolidation he shall file with the clerk of the board of directors of such corporation a writing declaring his vote against and dissent from such terms and stating the number of shares held by him and the number or numbers of the certificate or certificates evidencing the same: *Provided, however,* That as against any stockholder who is under legal incapacity to act for himself and having no legal guardian, such original dissenting vote shall not be required, and said period of thirty days shall not begin to run until the removal of such incapacity by the appointment of a legal guardian or otherwise. Within sixty days, but not thereafter, after the filing of his dissent from the terms of such sale or consolidation, such dissenting stockholder, or at its option such purchasing or consolidation company, may file a petition with the supreme judicial court for the county of Suffolk, setting forth the material facts and asking that the value of his shares may be determined. Failure of such dissenting stockholder to file such petition within said period of sixty days shall be taken as conclusive evidence of his assent to such vote: *Provided, however,* That any dissenting stockholder who, during said period of sixty days is legally

incapacitated from acting for himself and has no legal representative, may file such petition within sixty days after the removal of such incapacity by the appointment of a legal representative or otherwise. Upon the filing of such petition, and upon such notice to all parties concerned as the court may deem proper, the court shall pass an order requiring the certificate or certificates evidencing such shares, duly indorsed. to be deposited with the clerk of the court, and shall appoint a commissioner to ascertain and report the value of the shares. Report shall be made to the court as soon as is practicable, and, after due notice to the parties in interest, shall be confirmed by the court unless some error of law be made to appear upon the face of the report, in which event it shall be recommitted to the commissioner with such order as the court may make, or unless either of the parties to said proceedings shall claim a trial by jury, in which latter event the court shall order the question of the value of the shares to be tried and determined as speedily as may be in the superior court in the same manner in which other cases are tried in that court.

The purchasing or consolidating corporation shall be liable for and shall pay all sums due and payable to all holders of shares in the proceedings aforesaid, including such interest, cost, and expenses as the court may order; and shall likewise furnish such security for the said payment as the court may order. Upon payment, or tender or deposit with the clerk of the court of the value of such shares fixed as aforesaid, such shares, and the certificate or certificates thereof, shall become the property of and be delivered to the purchasing or consolidating company, whose right and title to receive the same and to hold possession thereof may be enforced by the court by any appropriate process. The said purchasing or consolidating company shall be entitled to the redelivery to it of the stock, bonds, or money which would have been deliverable to such non-assenting shareholders; and such purchasing or consolidating company may sell the same for cash at such price as may be available. Any deficit arising from a difference between the proceeds of such sales and the amounts paid such dissenting stockholders under the foregoing provisions shall be debts properly capitalizable under the provisions of the general law, and in order to provide means for the payment of the same either the old or the new corporation may issue stock or bonds subject to the limitations contained in the foregoing provisions of this act.

EXHIBIT C

SEC. 52. A street railway company incorporated under the laws of this Commonwealth may sell and convey the whole or a part of its franchise and property to, or may consolidate with, any other such street railway company whose railway connects with, intersects, or forms a continuous line with its own, if the facilities for travel on the railway of each of said companies shall not be thereby diminished or the rates of fare increased, and such other company may purchase of or consolidate with it as aforesaid; but such purchase and sale or consolidation shall not be valid or binding until its terms have been agreed to by a majority of the directors, and have been approved, at meetings called for the purpose, by a vote of two-thirds in interest of the stockholders of each of the contracting companies, and by the board of railroad commissioners as required by section sixty-seven of Part I. Whenever a street railway company sells and conveys the whole or a part of its franchise and property to, or consolidates with, any other street railway company, every stockholder of both the purchasing or consolidating company and of the selling company shall be deemed to assent to the terms of purchase and sale or of consolidation, when approved by the board of railroad commissioners in accordance with any provisions of law requiring such approval, unless, within thirty days after the date of such approval, he shall file with the clerk of said board a writing, declaring his dissent from said terms and stating the number of shares held by him and the number of the certificate or certificates evidencing the same: *Provided, however,* That, as against any stockholder under any legal incapacity to act for himself and having no legal guardian, said period of thirty days shall not begin to run until the removal of such incapacity by the appointment of a legal guardian, or otherwise. The shares of any stockholder so dissenting shall be acquired by the purchasing or consolidated company, and shall be valued, and the value thereof be paid or tendered to, or deposited to or for the account of, such stockholder in the manner following: Within sixty days after the filing as aforesaid of his dissent from the terms of such sale or consolidation, the said dissenting stockholder or the purchasing or consolidated company shall file a petition with the supreme judicial court, sitting within and for the county in which said stockholder resides or in any county in which said company operates any part of its railway, which petition, if filed by the company in a county other than that of the stockholder's residence, may upon his application be removed to the county in which the said stockholder resides, setting forth the material facts and praying that the value of such dissenting stockholder's shares may be determined. Thereupon, after such notice to all parties concerned as it may deem proper, said court shall make an order requiring such dissenting stockholder's certificate or certificates of stocks to be deposited with the clerk of said court, and shall appoint three commissioners to ascertain and report the value of such dissenting stockholder's shares on the day of the approval by the board of railroad commissioners of the terms of the agreement of purchase and sale or consolidation. Said report shall be made to the court as soon as is practicable, and, after due notice to the parties in interest, shall be accepted by the court, unless before such acceptance either of the parties to said proceeding shall claim a trial by jury, in which case the court shall order the value of said shares to be tried and determined by a jury in the same manner as other civil cases are tried in said court. The said commissioners' report, or the verdict, when accepted by the court, shall be final and conclusive as to the value of such dissenting stockholder's shares, and the amount so ascertained as such value shall at once be paid or tendered to such stockholder; or, if such payment or tender be impracticable for any cause, shall be paid into court. Upon such payment or tender or deposit, the shares of such dissenting stockholder and the certificate or certificates thereof shall become the property of the purchasing or consolidated company, whose right and title thereto may be enforced by the court by any appropriate order or process. Exceptions may be taken to any ruling or order of said court, to be heard and determined by the full court as in other civil cases; and said court may make all such orders for the enforcement of the rights of any party to the proceedings, for the consolidation of two or more petitions and their reference to the same commissioners, for the consolidation of claims for a jury trial and the trial of two or more cases by the same jury, and for the payment of interest upon the value of a stockholder's share as determined, and the payment of costs by one party to the other, as justice and equity, and the speedy settlement of the matters in controversy may require.

The CHAIRMAN. I wish you would make a general statement as to your personal views regarding this bill, as you are known to be the expert on consolidation in the commission.

Mr. HALL. I must demur, although I appreciate the compliment. My connection with the consolidation work has simply come through this, that following the mandate laid down in section 5 of the interstate commerce act, as amended, it became necessary for us to open a proceeding known as the consolidation of railroads, and in the distribution of our work that fell to my docket, so that I have had charge of it ever since. It is only in that sense, Mr. Chairman, that I may be regarded as an expert. I make no such claim.

That proceeding on our docket is known as No. 12964, consolidation of railroads.

As you already have before you the views collectively expressed by the commission, it is perhaps not necessary for me to more than touch upon the fact that in our last annual report the majority of the commission expressed views not wholly in accord with this Parker bill, and that some members of the commission, Commissioner Esch and myself, among others, did not fully fall in with the views there expressed by the majority.

The nature of those differences of view was explained sufficiently, I think, in a hearing had before the Senate committee on Senator Cummins's bill which at that time bore the number S. 1870 and has since been reported out as S. 3840, and I believe has passed the Senate.

Mr. THOM. No; it has not.

Mr. HALL. It has not passed the Senate?

The CHAIRMAN. No; it is on the Senate calendar.

Mr. HALL. I was not informed. I have been absent and for a period of a month or six weeks have not been following things as closely as I had heretofore.

Perhaps it will summarize, as well as in any other way, my own view if I say that the Parker bill here before this committee at the present time comes nearer to reconciling the different views that have been expressed by different students of this problem, comes nearer to harmonizing into one legislative effort what is most to be desired in the way of amendment to the existing statute, of any bill that has yet fallen under my eye.

I suppose that everyone who has had occasion to go into the matter very much could suggest some changes in this bill. I could, and perhaps everyone could. But it would be too much for anyone to expect that all his own views should be adopted and the views of others not, and this constitutes so pronounced an advance upon the existing statute, in the way of workability at least, that I quite heartily join with the commission in advocating not only its passage, but its passage at the earliest possible moment.

The objections which the commission has seen fit to note with regard to this bill all center around its provisions with regard to condemnation. Those are expressed in the report of May 11, which has already been made a part of the record. I do not know that there is occasion for me to enlarge upon those, amplify, or discuss them, unless some one desires.

Mr. HUDDLESTON. I should like to ask a question.

Mr. MERRITT (in the chair). Do you want to be interrupted?

Mr. HALL. Quite agreeable to me.

Mr. HUDDLESTON. As I understand the commission's report, they find fault merely with the technical provisions of the condemnation proceedings and not with condemnation itself?

Mr. HALL. That is correct, Mr. Huddleston.

Mr. HUDDLESTON. The question I want to ask is, What is the real necessity for the condemnation provisions? Why should we have a provision dealing with that feature?

Mr. HALL. Plainly at some stage of consolidation it is necessary to take care in some way of those who are already holding the shares of stock, let us say, or bonds, of one of the companies which is to become a factor in the consolidation, who do not care to accept for their shares or bonds other securities issued by the consolidated corporation, and elect to take the value of their shares or other securities in money rather than in substituted securities.

If the Congress has in contemplation putting out working and workable machinery for bringing about unification in any one of the different modes here contemplated, it seems appropriate, if not necessary, to provide at the outset just how the shares or other securities of such nonassenting security holders may be dealt with.

The Supreme Court of the United States years ago sustained a statute passed by the State of Connecticut, which was somewhat similar in its provisions to what is found here. It held that there was an element of public interest in that acquisition by one private

owner of shares, the private property of another, which would justify the exercise of the power of condemnation, and the reciprocal provisions of that Connecticut statute I find incorporated here in this bill. That is to say, either the nonassenting owners of those securities may apply for putting into motion the process of condemnation, or the corporation, on the other hand, may take the same course. It is reciprocal.

Now, if there is not some provision made in the Federal statute, just how will the rights of the nonassenting security holders be cared for? The existing railroad corporations in the United States are not corporations of the United States. They are corporations of States. The laws of those States may not, as in the case of Connecticut, provide for such a situation.

This great transportation machine, which is the object of your solicitude and of our constant care, is a national institution. It is the declared policy of Congress that adequacy of transportation will be furthered by provision for the development of well-rounded systems to perform that transportation, and in carrying out that national policy it seems to me appropriate that the Congress should provide how those incidents of consolidation should be taken care of.

All men are not of one mind, and while one man may very gladly exchange his securities in one of the constituent companies for those of the consolidated company, another man may not, and each may be justified in taking his own view.

It seems to me eminently desirable that provision should be made for that, if the power rests in Congress to do it, and the Supreme Court, as I read the decision, has held that there is such an element of public interest in a case of that kind; although it is the acquisition of private property by a private corporation, that property, nevertheless, is properly the subject of such a condemnation statute as is incorporated in this bill and as is illustrated by the Connecticut statute to which I referred. I can cite that to you, Mr. Huddleston, if you desire.

Mr. HUDDLESTON. What would be the effect of the operation of this bill; how would it operate if there were no provisions for condemnation? What would be the result?

Mr. HALL. I should think it would be left afloat to be determined by the laws of the different States and the procedure of the courts in those States.

Mr. HUDDLESTON. Just wherein would that be undesirable?

Mr. HALL. I should think it would inject an element of a good deal of uncertainty. For example, there may be States—there doubtless are—which have no provision analogous to that of the laws of Connecticut.

Mr. HUDDLESTON. What would happen in that kind of a situation?

Mr. HALL. I do not know. If you have ever had occasion, Mr. Huddleston, to study the question of the rights of minority stockholders, you know that it has many ramifications and it is very difficult to express an opinion about it.

Mr. HUDDLESTON. I have the thought about the right of these stockholders——

Mr. RAYBURN. Pardon me for interrupting. May we have that decision of the Supreme Court in the Connecticut statute cited, just for the record? You may do it in your revised statement, if you haven't it here now.

Mr. HALL. I can do it now, if it is any convenience to you.

The decision of the Supreme Court to which I have referred is Offield *v.* New York, New Haven & Hartford Railroad Co., 203 U. S. 372, decided December 3, 1906, and the Connecticut statute there construed is found in sections 3694 and 3695 of the Public Laws of Connecticut.

Mr. HUDDLESTON. I was about to express the thought that the rights of these stockholders having arisen under the State laws and being dependent upon them they should be left to the assertion of those rights in the State laws.

Mr. HALL. That view can be entertained. The question is, how far may the Congress, with propriety, go in carrying out, in making workable, a Federal program?

Mr. HUDDLESTON. My reaction to the terms of the condemnation is that it is not sufficiently protective of the rights of the minority stockholders. It is iron-clad. It gives them just one recourse. There is no alternative. It puts extraordinary power in the hands of the majority. For instance, I take it that the commission's only concern, when asked to approve a consolidation, is whether it is in the public interest. In other words, they have no right to reject consolidation because it is not in the interest of the minority stockholders. They have the right, perhaps, in their broad discretion to do that, but it would not be within the proper exercise of their discretion to go into that matter, as it seems to me.

A majority of one share, under the provisions of this bill, has the right to consolidate and if the other fellows do not like it, if the minority do not like it, all they can do is to sell their stock, without knowing what they are going to get for it. They have the election not to enter into consolidation which leaves them as their only remedy the reaping of the fruits of this condemnation proceeding.

In short, I suggest this, that there is always a certain amount of election given those who are having their property condemned as to what they will do. The only election here is, will they go into the consolidation or will they stay out? If they stay out it will be condemned and they will have to be satisfied with whatever the condemnation proceedings may show their stock is worth, and they have no subsequent alternative to enter into the consolidation if they are dissatisfied with the condemnation award.

Mr. HALL. I do not construe the statute quite as narrowly as that, Mr. Huddleston. Stockholders or holders of other securities of a corporation as to which it is proposed that it shall enter with others into a unification of some kind, are interested parties and entitled to be heard before the commission, if any approval of the commission is sought upon that particular form of unification, and that they not only can do so, but will do so is evidenced by the proceedings recently had before the commission in what is known as the Nickel Plate unification or merger, where minority stockholders of the Chesapeake & Ohio took a very active part in the discussion before the commission, in the putting in of evidence before the commission, as to whether or not this form of acquisition of control by lease and stock ownership was a desirable thing.

Without attempting to state with precision the conclusion which the commission reached in that proceeding, which is under paragraph (2) of section 5, it may be summed up in a general way by saying that

the project of unifying those various lines into one system was generally approved, but that the financial structure and the way in which it was brought about was disapproved.

In that case minority stockholders may be said to have very effectually urged and enforced their rights; certainly, their rights to a hearing and consideration.

As I understand this bill, there would be provision for minority stockholders when the project about unification came to the commission, to urge everything that had a valid bearing upon the propriety of that unification.

Mr. HUDDLESTON. I call your attention to section 207. It provides:

> If the commission finds that the provisions of this title have been complied with, and is of the opinion, after such hearing, that the public interest in adequate and efficient transportation service and the policy of Congress herein declared, will be promoted thereby, the commission shall enter an order—

That seems to be the only condition to the entering of an order, that the commission shall make that finding, which does not appear in any way to authorize the commission to enter into the consideration of whether the rights of minority stockholders are sufficiently protected.

Mr. HALL. Mr. Huddleston, you have read the words "after such hearing" in section 207. Section 206 provides for the hearing. Subdivision 1 of that section reads:

> Such carriers and any governor so notified, or any representative of the State designated by him, and any other person having an interest, shall be afforded a reasonable opportunity to be heard.

That certainly would seem to include minority stockholders in one of the proposed constituent companies.

Mr. HUDDLESTON. They have an undoubted right to be heard.

Mr. HALL. Very well. It is upon that hearing that the commission is to reach a conclusion. You stopped with the words "the commission shall enter an order." But those words go on—

> approving the plan, on the terms and conditions and by the methods set forth in the petition, or with such modifications thereof, or upon such terms, conditions, and methods, as it may prescribe as necessary in the public interest.

Mr. HUDDLESTON. Not in the minority stockholders' interests?

Mr. HALL. Not in the private interests. It is not my conception that this bill is framed in any private interest at all, whether that be a short line, or a weak line or a strong line or a big line or a bank or a body of stockholders or anybody else.

My conception of it is that in order to promote adequacy of transportation, which is the most important thing for the industries of this country, we shall have as efficient and well equipped agencies of transportation as can be devised. And this affords a method by which those who have not yet grown to the proportions, let us say, of the New York Central or the Pennsylvania, or the Santa Fe or the Union Pacific, may have an opportunity to so grow and may be able to compete as among equals with those which have already grown.

Carriers with well-balanced traffic and a variety of traffic—not seasonal—certainly can compete better with other carriers which already have those advantages than can carriers which are now experiencing whatever disadvantages may come from a traffic that is

not well balanced and from a traffic that, in its large revenue, is mainly seasonal.

Without discussing at this stage the advantages that might come from consolidation, I merely stress this at the moment: That if the object be to serve the public interest by setting up efficient public servants in the way of transportation agencies, that certainly should be done and with justice to all that are concerned, but the prime consideration will be to supply the public with adequate transportation agencies.

Mr. HUDDLESTON. Suppose the owners of a certain railroad should acquire the majority of the stock of another line and then devise a plan of consolidation which would be unfair to the latter line. It would be unduly advantageous to the first line. What has the commission under this bill got to do with that?

Mr. HALL. I think that it has a good deal to do with it, Mr. Huddleston.

Mr. HUDDLESTON. And if the commission finds that the consolidation is in the public interest and the public interest is protected, how can the commission reject that consolidation, because the minority stockholders of the second line are not adequately compensated?

Mr. HALL. It is not in the public interest, as I see it, that those who have moneys to invest shall be discouraged from putting them into railroad properties. There is a large amount of new capital required every year to serve this growing country and its growing industries.

That new capital should come from investors out of their savings, and not out of the earnings that the railroad has made.

Now, any action which tends to give investors the impression that if they put their money into the shares or other securities of a railroad they are exposing themselves to some unfair treatment which the commission would be powerless to prevent would result in something that is distinctly detrimental to the public interest.

Therefore I should say that the commission would regard it as an element of public interest that the security holders in the existing corporation should be fairly treated, and we have so regarded in the case to which I have referred.

Mr. HUDDLESTON. Your interpretation of this section, then, would be that it includes the finding on the part of the commission that the minority stockholders have been fairly dealt with?

Mr. HALL. If that issue is presented in the course of the hearings. I do not think the commission would be called upon to travel outside the record.

Mr. HUDDLESTON. Nothing that is not presented could be considered. The thought I had was that it was actually presented. We had just as well write that in here, then, if that is what this already means. If that is a true interpretation of this statute, then we will not be doing it any harm by saying that the commission, in addition to the things found here, shall find that the minority stockholders of the consolidating corporations have been fairly dealt with.

Mr. HALL. You mean that in each instance the commission shall make a specific finding to that effect?

Mr. HUDDLESTON. If that is already implied by this language, it would not change the legal effect of it to write in such a clause.

Mr. HALL. It would, if you put in that the commission must make a specific finding to that effect, because it could not make that finding if there were no issue regarding it and no evidence put in bearing upon that.

Mr. HUDDLESTON. Accepting that thought about it, if it is in the public interest that the minority stockholders shall be fairly dealt with, should not the commission make a finding on the subject?

Mr. HALL. If the record will enable it to do so.

Mr. HUDDLESTON. It is up to them, just the same as any other thing they have got to find; if that is in the public interest, it occurs to me the record ought to be required to satisfy the commission on the subject. I think I should be perfectly frank, if I have not already been so, by saying that I do not think that that is the proper interpretation of this bill. I do not think it means that the commission must find, or that an issue of that kind can be presented to the commission. I think the whole bill must be read together, which implies that the public interest must be furthered by the consolidation, in a more direct way than merely that some minority stockholders shall be relieved of cause for dissatisfaction. I think that is too remote to write in the bill.

Mr. HALL. I did not have it in mind that the commission, in passing upon the public interest, would necessarily be passing on the question as to whether every holder of a security in one of these constituent companies may not have reason to feel that he is being inadequately cared for. What I did mean was that every minority security holder would have an opportunity to be heard, and that if in the course of that hearing there were matters presented which caused the commission to doubt the wisdom, in the public interest, of allowing this consolidation or unification, or whatever form it takes, to go through, without taking care of the feature complained of, it seems to me that under the wording of this bill the commission would be fully warranted in attaching such conditions or qualifications as would take care of that situation, and would do so in the public interest.

Mr. NEWTON. Mr. Commissioner, is it your opinion that the provisions of section 20–a of the interstate commerce act, that being the section pertaining to the regulatory power of the commission in reference to the issuance of securities, protects the public in reference to the issuance by these consolidated carrier companies of the new securities that would be issued?

Mr. HALL. I think so, sir.

Mr. NEWTON. You do not think there is any occasion, then, for any reference to that in the consolidation act?

Mr. HALL. I think that there is reference to it.

Mr. NEWTON. It is my understanding that the idea of the bill as now drawn is to rely upon the provisions of section 20a.

Mr. HALL. Page 6, section 206, subdivision 2.

Mr. NEWTON. That refers to the provisions of 20a.

Mr. HALL. Yes; it says that without a separate hearing the commission in this proceeding may take any action which it is authorized to take under section 20a.

Mr. NEWTON. You have no doubt in your own mind that the public is amply protected, then, with the additional provisions in that respect?

Mr. HALL. That is my impression, Mr. Newton.

Mr. NEWTON. The bill makes provision for the commission to act as appraisers in the event of condemnation proceedings. In your report on the measure to the committee, you ask to be relieved from that, and to have it rest upon commissioners appointed by the court. The ground of your objection is that the commission is now overburdened.

I can apprecaite the reason for that objection, yet it seems to me if this plan is to be carried out successfully that the commission is in a far better position to act as appraisers than would be the court acting through special appraisers to be appointed by it.

Mr. HALL. Of course, that is very complimentary, Mr. Newton. We have developed a body of men in our valuation work, and accumulated a body of experience in connection with it, I think, that is not to be found in connection with other regulatory bodies to anything like the same extent, but our work has been chiefly devoted, as you know, to arriving at what may be, for lack of a better term, called a rate base.

The last principal amendment to the statute that was made in 1920 made it plain that this was for rate-making purposes. Now, the value so arrived at, which is confined to property devoted to public use, might be quite a different value from that arrived at when you are considering not only property devoted to public use, but also property not devoted to public use, constituting assets of the corporation, as bearing upon the value of its shares of capital stock or other securities held by a nonassenting holder.

The provisions here for condemnation under this statute seem to be confined to two cases, one where the securities are issued by one of the component companies, voting securities, they are called, which are held by a nonassenting holder, and the other is the case where property other than securities is held under laws which do not give the holder the right to assign or transfer property.

I assume that an illustration of the latter would be a case where railroads were chartered and empowered to acquire rights of way, and the like of that, without power to transfer the real estate so acquired to other corporations.

The value of the securities held by a nonassenting holder might be quite readily determined from stock quotations if it was an active stock. At least, you could get some notion with regard to it. So also with bonds which were traded in on the principal exchanges. Their value would rest in part upon earning capacity, in the last analysis, and of course would also rest in the case of many railroads, not only on the value of the property devoted to public use, which is all that we consider when we arrive at a rate base, but also very largely on holdings of property not devoted to public use.

If I recall rightly, the New York Central System throughout the period of Federal control was receiving an income of some ten millions or more which did not go to the Director General at all. It was not from property that was taken over and under Federal control, but it was a part of the revenues of the New York Central and reflected, of course, in the value of the New York Central's securities.

Those are the elements which have to be taken into account when you arrive at the value of the securities of a nonassenting holder.

Are we especially equipped for that? It is not clear to me that we are. It may be that we are. I do not wish to deny too much on behalf of the commission.

Mr. NEWTON. You have a division of finance with a very competent director, Mr. Mahaffey.

Mr. HALL. Yes.

Mr. NEWTON. You have already mentioned the valuation work that is going on in another division of the commission, and it occurred to me that with the machinery that you now have and with such additions as may be necessary to make, the commission would be much better qualified to do this than would be the courts, dependent as they are upon the appointment of an appraiser here and an appraiser there.

I find, in talking to judges both in State and Federal courts, that they feel that more and more of these matters that have gone to the courts, ought to be handled by commissions.

Mr. HALL. Does that mean additional commissions or the existing commission?

Mr. NEWTON. Just speaking broadly, they feel that those things involve questions that a court can hardly approach and handle with any degree of satisfaction to itself or to the public. A judge can not appraise this property himself. He has got to rely upon some one he will appoint for that purpose, and it does seem to me, taking everything into consideration, that the public interest will be better served by letting this work be done by the commission rather than by the courts

Mr. HALL. Well, there are two things to be said in connection with that—that is, there are many more, but there are two things which I might say now in connection with it.

If, under this bill, it were committed to us to find value, and I suppose that means the exchange value of the securities held by a nonassenting holder, to do it in our own way and by our own methods with our own forces, utilizing what information we have, inventory and other, of the property of the carrier, its annual reports, and all the rest of it, and come back with a figure to the court in which the condemnation proceeding is pending and say, "We report that in our judgment the value of these shares on such and such a date was so and so," giving our reasons for it, and leave it to the court to accept or reject—that valuation would be one thing, and it would be quite another thing for the members of the commission to be constituted as officers of the court, sitting perhaps in California, the next proceeding coming up in the Dakotas and the next in Louisiana and the next, perhaps, in New Jersey, or in Georgia, wherever it might be, the members of the commission or a division thereof being called upon to function as officers of that court under the rules prescribed by that court, or prescribed for that court by the Supreme Court, as in the case of equity jurisprudence, possibly constrained to go before that court to take oath before we could act, and further stamped with the quality of masters in chancery, that seems to be quite a different thing.

In the course of years and with our experience we have built up a method of dealing with the kind of value we are after, the rate base, and I presume that in the same way we can go after this other value, the exchange value.

I take it here that value would be the consideration which a man not obliged to buy would pay to a man not obliged to sell. If we were charged with the duty of doing that and reporting that to the court and then letting the court do with that value what it saw fit, that, as I say, would be one thing; and for us individually or collectively to become officers of the court and have to pursue whatever methods the court saw fit to apply, that might involve a very great interruption of our constantly growing work.

I presume that the members of this committee realize that underlying all these things which are talked about as additional work for the commission, there is a steadily increasing mass of litigation, so that we have now on our formal docket something over 2,000 litigated cases where some years ago the number would have been very much less, and I do not touch upon those that are on the informal docket.

Those cases deal with the rights of individuals, and like any other matters in litigation they should be promptly considered and disposed of. Everything additional that is committed to the commission, especially if it calls upon us to go out of our way into new paths and to serve in new quality, is bound to take up our time and our energy and, to a certain extent, our money.

I think it was mentioned also in the report that the bill does not leave it entirely clear whether the members of the commission are expected to perform these duties themselves, or whether they can utilize their forces for the purpose. It suggests that we are to serve as masters in chancery, which seems to imply that we are to individually take oaths, and I do not recall a case where two or three or seven or eleven masters in chancery have been appointed in one given case. I do not know how it would work. One master in chancery, of course, can have only one mind. I do not know how many minds three masters in chancery might have.

Mr. NEWTON. Or how many 11 might have.

Mr. HALL. Or how many 11 might have, and how that would work out, whether this would be a majority rule, or what it would be. It is all in the vague.

Mr. NEWTON. It seems somewhat that way to me, although I construed that clause on page 16, "while acting as a board of appraisers the commission shall have the power and duties of a master in chancery," I did not construe it quite as technically as you did, but of course it should be cleared up.

Mr. THOM. May I suggest there, Mr. Newton, that it does not say that the number of individual commissioners shall act, but it says that the commission shall act, and the commission has but one mind.

Mr. HALL. We are not always aware of it.

Mr. NEWTON. After some of us read the Pullman Surcharge Rate decision we arrived at a different conclusion.

I think you also said something about the question of whether there will be sufficient moneys at your command. I think that is also one of the reasons given why you felt that this should not be

turned over to the commission. I may say in that connection that during the last two years the cuts on the funds of the commission have practically ceased so far as Congress is concerned.

Mr. HALL. Yes.

Mr. NEWTON. And Congress has taken the position and some of the members of this committee have interested themselves in that question, because the commission is an agency of Congress and therefore the jurisdiction of the Director of the Budget over it is somewhat different in a way than as to some of the executive branches of the Government, and I was under the impression that that theory was getting somewhere and you were getting about all that you could use.

Mr. HALL. We appreciate that very much and our exigency since this action by the committee and the Congress has been in finding the men who are competent to do the work, rather than in finding the money with which to pay those men. We have not been able, in some branches of our work, to fill up the quotas which had been authorised by the appropriations made, because of our difficulty in finding the right kind of men.

Mr. NEWTON. At the salaries prescribed?

Mr. HALL. Yes. The commission and the legislative committee have not in this instance been very definite about the added cost, because we do not know how much it would involve. We do not know how many cases of nonassenting security holders are coming to the commission for determination of the value of their securities. We do not know how many cases there will be of the only other form of condemnation that is contemplated.

Mr. NEWTON. Of course, those things can not be figured out in advance, but don't you think, so far as that particular objection is concerned, that that will be amply cared for by Congress through increased appropriations?

Mr. HALL. Judging by experience, we are warranted in that hope.

Mr. NEWTON. I think so.

Mr. HALL. But it would only be fair, I think, when we are discussing this bill, to point out that this might take such a shape that we would have to ask for more men or more money or both. If the bill should be left in such a way that the court could construe it as requiring the individual service of the members of the division or members of the commission, sitting as masters in chancery and conducting hearings and the like, that might constitute so formidable an interruption to our work as to be very serious, and I trust that the Congress will see its way to provide that if we are to serve as commissioners or as appraisers, whatever it may be, we may do so in accordance with our methods and usages and through the use of our forces which are now fairly well-trained forces.

Mr. NEWTON. May I not suggest, Mr. Chairman, that the commissioner and his associates give some thought to an amendment along that line, so as to make that clear, so that we may have that to consider when we take up the bill section by section?

The CHAIRMAN. If you will do that, Mr. Commissioner, please.

Mr. RAYBURN. Mr. Commissioner, I was interested in one phase of this whole question of consolidation. Of course, I think it is in the mind of everybody and was when the transportation act of 1920 was under consideration and when it was passed, that one of the

things to be considered in this matter and one of the impelling reasons why a section was put in the bill with reference to consolidation was the question of weak lines.

What do you think about this measure as a measure of economy or as a measure to effect economies in operation in the long run, if a consolidation along the lines suggested in this bill could be effected? Would there be any or could there be any economies, or what is the probability along that line?

Mr. HALL. I think that there would be some economy in money. There would be more economy in the time taken in the movement of freight which is for the advantage, of course, of the shipper and a more dependable supply of power and of cars which, again, represent economies to be anticipated from the consolidation of diverse lines into one system.

I think the economies that might be realized in money have been very greatly exaggerated. I think the most conservative and to my mind the most thoughtful consideration of what might be expected from consolidation is to be found in that memorandum of Mr. Chambers's which I put into the record before the Senate committee, and I see it has been incorporated in the hearings here.

Mr. RAYBURN. Who is Mr. Chambers?

Mr. HALL. Mr. Chambers is a vice president of the Santa Fe system.

Mr. NEWTON. He was an official also of the Railroad Administration, was he not?

Mr. HALL. Yes; he was director of traffic.

Could I supplement that a little?

Mr. RAYBURN. I trust you will.

Mr. HALL. This commission is charged with the exercise of regulatory functions over the carriers engaged in interstate and foreign commerce, and also, since 1920, it has been charged with certain duties which might include initiation of rate structures, but, at all events, adaptation of rate structures to certain purposes.

That task can be accomplished far more satisfactorily to the country and I think with a much greater degree of certainty and confidence as to reaching right results on the part of the commission, if, instead of having to deal with all kind of railroads, big and little, weak and strong, we are dealing with a set of competitors that are fairly well matched and can take about the same medicine, because their traffic on the whole is very similar.

It would greatly simplify the problem of regulation, and it ought to bring forward more rapidly the day when rate reduction can be something more than a hope or a dream.

Now, I am speaking perhaps rather generally here, but as we look at it, that is a very important consideration.

Within a given region of the United States, the rate structure has to be about the same. You can not help a weak railroad by allowing it to charge higher rates. They have all got to have about the same rates. Many of these weak railroads are weak simply because they have not the traffic. You must multiply the rate by the ton in order to make revenues. It is an expense which is continually borne by the country if property in being transported from one part of the country to another has to unnecessarily leave one line and go onto another line. There is always expense

incidental to the surrender of possession to somebody else who takes on that possession, and consolidation properly carried out ought to result in systems which can serve the bulk of the United States without necessitating more than one transfer; that is, without necessitating more than a two-line haul. I speak of the bulk, of course.

I am not sure whether I responded to your question or not, Mr. Rayburn.

Mr. RAYBURN. Exactly what I meant was this: When I speak of economies, I mean such economies put into effect by the railroads as will cheapen transportation.

Mr. HALL. Those economies come very largely from the investment of new capital. The reason why the railroads of this country have come back since 1920 is because of the immense amount of money they ploughed into their plant and their equipment, that enables them to function at less expense.

To the extent that a consolidated system has a better balanced traffic, a better assurance of steady earnings and a better credit, to that extent it can get the new money needed for such betterments more certainly and at less cost, less hire for that money. That, in in turn, tends to reduce the operating ratio, and that, in turn, tends to bring about the day when the rates can be reduced.

Do I make that plain?

Mr. RAYBURN. Yes. Of course, in considering transportation as a whole, as a national proposition, the commission must build a rate structure that will take into consideration what are the so-called weak lines. Therefore do you not think that the commission has set higher rates than it would have if these railroads had been joined on to some road that was probably making an excess of earnings?

Mr. HALL. That is another aspect—the redistribution. That would have its bearing, undoubtedly. But, Mr. Rayburn, let me point out to you that before there was any section 15–A, before the transportation act was passed, we had to deal in essence with the same kind of thing. Take, for example, the two main roads going west to Salt Lake, the U. P. and the D. & R. G. The traffic moving from Denver could move by either of those roads. In order to determine what was a fair rate from Denver to Salt Lake, we had to fix something that was higher than the Union Pacific would absolutely need, and something lower than the D. & R. G., which is the weaker road, could fairly earn. We had to find the happy mean as nearly as we could, so that the traffic might move one way or the other, and it would not be confiscatory on the D. & R. G., and, on the other hand, it would not be padding the Union Pacific.

Now, that is inherent in any rate structure. If you have some roads that are very necessitous, and others that are fairly well-to-do, and they are all to be kept alive, you have got to consider both kinds if you are going to have a rate adjustment which will promote adequacy of transportation.

Mr. RAYBURN. Of course, I recognize that that problem is to be faced whether we have recapture under section 15a or not.

Mr. HALL. Yes.

Mr. RAYBURN. But I must say that I am disappointed—probably because I do not know enough about the question—whenever a witness comes here and says that we are not very likely to get any relief.

and in all probability will not get any relief, out of an honest, sane consolidation of railroads except in the probability that some lines will be attached to a stronger line that will keep them going, when they would otherwise be ripped up, and that we may have a little more efficient service. It has been my hope that in a consolidation of this sort we might have a more efficient transportation system or systems and yet get some relief in the way of paying money to the railroads.

Mr. HALL. Mr. Rayburn, I have intended to voice what you were just summarizing. I think there are important advantages to be derived from consolidation, if that is the question, and that there are some economies; but I have seen many statements which to my mind were very greatly exaggerated as to the saving to be made.

Mr. RAYBURN. Oh, yes. Those statements are based on hope, just as a lot of these railroads have been built, with nothing to sustain them.

Mr. HALL. Yes, sir; and there is no use fooling ourselves or anybody else as to what is to be anticipated.

Mr. RAYBURN. No. I want to get what you think about it.

Mr. HALL. I think there does result a tendency toward economy on the one hand, and better service on the other hand, which will ultimately be reflected in either the holding down of rates or the reduction of rates. But just as long as it is true that the railroads' cost of living has gone up higher in the last 10 years than the railroads' receipts have gone up, that cost of living will have to be taken into account whenever we consider rate reduction.

Mr. RAYBURN. There is no question about that. That is all.

Mr. LEA. Suppose that consolidations should pretty generally occur, as contemplated in this bill, what, in your judgment, would be the effect upon the valuation of the railroads for rate-making purposes? In other words, would it tend to increase the valuation of the railroads for rate-making purposes, or what effect would it have, probably?

Mr. HALL. I should have to think about that a moment. You see, we have taken the existing railroads of the United States and, for rate-making purposes, have fixed upon a valuation date—June 30, 1914, 1915, 1916, 1917, down even into the twenties—as our work progressed. Then, if and when we try to bring the valuation for rate-making purposes down to date, we have got to take account of the increment, and also of what has been retired, what has become obsolescent and gone out. Now, a change in ownership of a given stretch of rails ought not to affect that, as far as I can see.

Mr. LEA. What I had in mind was this, for one thing: We have, for example, a strong railroad company that is expected to take over a weak one, a road that is comparatively nonproductive. The stockholders of the strong road, if they take over the weak road, are going to have their dividends proportionately decreased, if the rates remain the same. The natural tendency, it would seem, would be for the strong roads to oppose taking over these weak roads that would lower their dividends. Now, one way out of the woods is to increase the valuation of those two roads, when consolidated, above their present valuation, to give the same return; that is, ultimately it would work out that way, would it not? That is, it would be the tendency of the railroads to want to do that; to get an increased

valuation in order to take care of the stockholders of the profit-producing road?

Mr. HALL. Well, they might want to do it, but I do not quite see how they would do it.

Mr. LEA. Has not the general history of consolidations been an increased capitalization accompanying them?

Mr. HALL. Capitalization has nothing to do with valuation.

Mr. LEA. I mean valuation. Have not consolidations of corporations generally meant increased valuations?

Mr. HALL. Of the property?

Mr. LEA. Yes.

Mr. HALL. I do not know that we have any record to that effect.

Mr. LEA. That is the rule, is it not, in private corporations not controlled by regulatory bodies?

Mr. HALL. I do not know that we know anything about their value. We may know something about their capitalization.

Mr. LEA. I have only a general impression about that, as a member of the public; but it seems to be the general impression that consolidation of corporations leads to an aggregate capitalization in excess of the total valuation of the corporations consolidated, and I wanted to get your judgment as to how that would affect rate making.

Mr. HALL. It had not occurred to me that it would affect it one way or the other, and therefore I paused for a moment before replying. So far as the capitalization is concerned, that is protected by the commission at present, under section 20-A, and it is not likely that the commission would suffer a swollen capitalization.

Mr. LEA. I suppose we would have to depend upon the commission to protect the public against that desire to take care of railroad stockholders in that way.

Mr. HALL. As a practical matter, gentlemen, is not that necessary? If the commission can not do the job, then you ought to put somebody in the commission's place. But you have laid upon the carriers certain duties, by statute, and you have given us the power to deal with alleged infractions or failure on their part to perform their duties; and then, in addition, you have conferred upon us certain powers and duties like valuation, passing upon new security issues, and such as you propose here in this bill.

Now, if those functions are to be intelligently and adequately exercised, it seems to me that what is to be done will have to be determined by the record that is made, and that if you try to limit, restrict, or control what is done without knowing what that record will be, something artificial is coming into the dealing that will make it unsatisfactory, and that really the solution is for the Congress, if it has not an agency that can fulfill its will and do what the statute calls for, to get rid of that agency and get another.

Mr. LEA. I presume another agency would have to perform the same function.

Mr. HALL. Well, of course, opinions will differ. You can not put 11 men on a commission whose views will not differ. I suppose on this committee and on the Senate committee there will be men whose views will differ from those of the majority of the commission. They may accord with those of a minority of the commission. We do not know; and all we can know is that reasonable care has been taken in selecting an agency, which has built up a staff that is now

informed by experience, that is very competent and well versed—I think Mr. Thom will bear me out in that statement—and that we have since 1887 been trying to handle this problem of regulation: chiefly, until 1920, rate regulation, but since 1920 trying to deal with these other questions, too. Now, I think it is of the essence of that dealing that, with certain legislative standards laid down as our guide, the agency, whatever it may be, should be empowered to apply those standards to the facts developed upon a record, without a direction as to what it is to do in the way of that applying.

Do I make that plain?

Mr. LEA. Yes. Personally I have the idea that the solution of our railroad problem depends upon the commission. I think that our fate on that question is linked up with your commission, and I am hoping for its success.

On this question raised by Mr. Rayburn about the problem of taking care of the weak road, if we consolidate and give the weak road to the strong we simply pass the burden over to the strong road, do we not, in effect?

Mr. HALL. If you could divide railroads or mankind into the weak and the strong, financially or otherwise, and say, "Now, permanently throughout this man's lifetime he is weak, he is going to be poor, and throughout another man's lifetime he is strong, he is going to be rich," then we could perhaps attempt something of that kind. But the butcher boy of to-day may be the head of a great packing house 20 years hence, and if you take the railroads that were classed as weak 10, 20, or 30 years ago and match them up with those classed as weak to-day you will find that a great many which were weak then are strong now. We have not, therefore, any permanent element in that problem.

Now, every one of these roads that may be classed as weak—and it is not necessarily weak because it is short, or short because it is weak—may have in it the possibilities of a great and very early prosperity. At all events, if it serves communities it is performing a public service and, to the extent of the traffic that it has, is of some value in any system; something above its scrap value. It seems to me that a rational plan of consolidation would involve taking in the less productive properties at a figure that somewhat resembled their contribution to the whole: something representing their present value and not their value as based upon what they might be in years to come.

So I think it comes right back to the plain common-sense proposition: The value for the purposes of consolidation is to represent the compensation which a man not forced to buy would pay to a man not forced to sell.

Mr. LEA. Of course, the fact that some of these weak roads may work out, and probably will, is one hopeful feature of the situation. But fundamentally we deal with the problem on the theory that they are poor producers. That is what the problem is, is it not; dealing with roads which are poor producers? Now, when the stockholders of a strong railroad want to consider consolidation, they are forced, as business men, I take it, to try to make a consolidation that will make the best return to the company. That will be their interest. The public interest, as we take it here, is to try to get them to take the burden of these poor roads, which means a financial sacrifice to them. How are they going to be compensated in this plan of consolidation, without any change in the rates, for taking over a road that unquestionably is not a productive road?

Mr. HALL. I have not looked at this bill, or any other consolidation bill, as an orphan asylum for the weak sisters. It seems to me that what you call a weak road should go into a consolidation at a figure that represents its real worth.

Mr. LEA. Then suppose it goes in at its real worth. It may be 25 per cent of its replacement value. Then, when it becomes the property of a prosperous company, for rate-making purposes it would be valued at least at replacement value, would it not?

Mr. HALL. Well, we have never quite done that, I think.

Mr. LEA. Anyway, it would have a greatly different valuation?

Mr. HALL. For rate-making purposes; yes. For example, here is a road that cost $50,000 a mile to build. It is so located that it does not earn its operating expenses. You might go further and say that at present it has hardly more than scrap value. And yet that road, under the existing rate base and rate adjustment in that region, may lack nothing in the world except traffic. Now, just as has happened in Texas, oil fields or something else may give it that traffic. It would not be just to say that this road should be debarred from earning out of that traffic a fair return upon the real value of the road for rate-making purposes, as distinguished from what might be its scrap value to-day. That is one distinction that can be drawn between value for rate-making purposes and value in exchange.

Mr. LEA. But in practice, as a weak road was taken over, this change in valuation between the purchase price and the valuation for rate-making purposes would in the aggregate be a compensation to the larger road to a degree, would it not?

Mr. HALL. It would have a more valuable property.

Mr. LEA. For rate-making purposes?

Mr. HALL. Yes.

Mr. LEA. And that, in turn, would tend to distribute the burden to the shippers of the country, of course, generally, and take it away from the stockholders of the weak road?

Mr. HALL. Well, I do not know that the valuation for rate-making purposes of this weak road to which you refer would be any greater or any less after it went into the consolidation than before. I have been trying to draw the distinction between the value for rate-making purposes and the value in exchange. We have already, undoubtedly, inventoried this weak road that you are speaking of; we have collected the information with regard to it which Congress requires us to collect under section 19–A; as of the valuation date, we have gotten together costs, prices, and so on; and in course of time that will be brought down to date as the rate-making base, the amount upon which that weak road will be entitled to earn a fair return if it can, under a rate adjustment that has been approved and is sound for the part of the country where it is.

Now, if that road, which we may call Road A, should be shifted into and become a competent part of a system, I do not see why its rate-making value would be changed by reason of that incorporation.

Mr. LEA. So the aggregate rate-making value of the two roads should be the same after a consolidation as before, theoretically at least?

Mr. HALL. Yes; theoretically. Practically I do not know what would happen. I presume that if such a weak road went into a system like the Santa Fe, they probably would put the roadbed into a Santa Fe condition; they would put Santa Fe equipment over it; they would have heavier rail, and all the rest of it, and in a short time that road would be worth more for rate-making purposes.

Mr. HOCH. I would like to pursue just a little further Mr. Lea's line of questioning. He suggests that if the weak lines are put with the strong lines that would put an additional burden upon the strong lines for which they would have to be compensated, and that the only way to compensate them would be an increase of rates. Do we not have to bear in mind the present situation and the present law, under which the theory is that the weak line is now associated with a strong strong line for rate-making purposes in this group system as contemplated in section 15–A, and that it is now receiving a rate which is higher than a reasonable rate by virtue of the fact that the weak line is included with it for rate-making purposes; so that, as a matter of fact, there would be no necessity for increasing the rates under a consolidation to compensate it, because it is already getting what we may call an extra high rate by virtue of this group system of rate making now in effect, and that just to the extent that we got any economies by a consolidation, as distinguished from an association for rate-making purposes only, to that extent we would make possible, under consolidation, a decrease in rates?

Mr. HALL. Yes; I agree with you.

Mr. HOCH. Is not the comparison with the present law rather than with the situation where we had no group system of rate making?

Mr. HALL. All comparisons, when you are framing legislation, it seems to me, must be with the state of things that exists. Taking it by and large, consolidation seems to me mainly to make for adequacy of transportation service at the lowest cost to the public that can be realized.

Mr. HOCH. It has been assumed by witnesses before this committee that the policy of consolidation is already established in the law. Do you interpret the present law as directing, in an affirmative way, the promotion of consolidations?

Mr. HALL. I construe the present law as indicating a congressional intent that consolidations in the public interest shall be furthered and not hindered.

Mr. HOCH. It provides that considerations, under certain limitations, should not be hindered. I do not see, except by inference—which is perhaps rather strong—that there is anything in the present law comparable to the section that we find in the proposed law which sets out an affirmative declaration of policy to promote consolidations; but, rather, all that I find in the law is that Congress said:

> There may be some consolidations that ought not to be prohibited. We ought to modify the antitrust laws to the extent of permitting some consolidations that may be sought in the natural course of events by the railroads, but in permitting those departures from the rule against consolidations we think they should only be permitted if in harmony with the general plan which we direct the commission to formulate.

I do not find anything in the present law that says that it is the policy to bring about consolidations. I do not want to be academic about this, but I think the question of the policy of consolidation is a large question here, and it seems to me somewhat of a mistake to assume that that large question has already been settled by Congress. I want to get your idea about that.

Mr. HALL. My impression is that what was there incorporated really represented a congressional intent that consolidation, unification, in some form, should be furthered rather than hindered; that restraints of antitrust and other laws in so far as they conflicted with that should be removed, and that the country was really looking forward to a program of building up strong competing systems. I think that is the view which is taken generally by those who have to consider such matters. I think the railroads have construed it as representing an attitude of Congress toward the transportation problem or problems; and I confess that, so far as one may regard anything as being a settled policy of Congress, I have regarded it as the settled policy of Congress since 1920 that it favored rather than opposed consolidation.

Mr. HOCH. Then just to the extent that consolidations fail to come about under the present law, you would consider the present law a failure?

Mr. HALL. Well, I think the present law is unnecessarily rigid. I think it has served a very useful purpose. It has promoted a lot of discussion and thought. I think it has prepared the ground, so to speak; it has paved the way. I think it is unnecessarily rigid in several things. It contemplates only one form of consolidation, the corporation owning what it operates and operating what it owns. Now, you can not expect a system to leap into full growth in an instant. You have, for example, out of ten or fifteen possible components of a system, three or five that are prepared to consolidate—but not the whole 15—and to consolidate in the form contemplated by the existing statute. They might consolidate, but there are still left the rest; and out of the rest some might consolidate. That would make a reduction in the number of corporations outside the system, but still you have not the system; and then, as this process went on, every time there was a closer approach to consolidating the entire system, you would have to have a revamping of the corporate structure.

All that is clumsy, if I may say so with all respect. We have the experience of a hundred years in this country to guide us, and might avail ourselves of the other methods of getting together until we ultimately reach the stage where each system does own what it operates and operate what it owns.

Mr. HOCH. The bill here abandons entirely the idea of the formulation of a general plan of consolidation for all the railroads of the country. I can readily understand the practical objections that are offered to formulation of a general plan putting all the railroads of this country in a certain number of systems. I can see, however, in theory considerable advantage in some sort of general scheme before you start in to approve any particular projects. Do you think there is any possibility, by proceeding under the proposed bill, and simply passing upon each project as it is presented, that we may build up ultimately a system that is not harmonious at all?

Mr. HALL. What is possible, of course, is very hard to speak about. As to what is probable, I think that the commission and everybody else will constantly have in mind, in each instance, whether what is there proposed is going to be likely to fit in with what will be proposed elsewhere.

Mr. HOCH. So, as a matter of fact, even though there is no requirement of a general fixed plan, you think that it will be sufficient to have within the minds of the commission the whole general, ultimate situation as they pass upon each particular project?

Mr. HALL. Speaking generally, and answering as to the whole—there are a great many considerations involved in that—but speaking of the whole, I think it would be sufficient to try it, and if we found after a few years of experience that it was not working right, then it ought to be possible to come back to the Congress and explain how and why it was that it was not working right.

I ought to say that when the transportation act of 1920 was in the framing, and the commission was asked to express its views on this and other subjects, it did not have in mind the formulation of any complete plan of consolidation, but proposed that authority be granted to this commission to approve applications for consolidation upon such terms for the public interest as the commission might approve. It was a very simple proposal, and it was incorporated in the House bill as it passed the House. Later it was modified by the conferees in the conference between the Senate and the House, and it finally emerged in its present form. The commission has accepted the mandate given under that act, as it emerged from the work of the conferees, but I do not know that we have ever been very strongly impressed with the necessity or even with the advantage, of a complete plan. However that may be, we have had that in mind for six years, and we have had the very full report of Professor Ripley. We regard that as a very intelligent and thoughtful report.

We have had something like two years of hearings. During the succeeding years we have been analyzing the results of those hearings as contained in some 54 volumes of record. We have reached the conclusion that there are so many alternative solutions as to what would make the best system in the public interest that it would be a little hazardous to undertake to plat out in advance one of them and say, "this is the system in which these carriers may join, but they may not cross the line and join another system." It is true that the existing statute provides that the plan can be modified, and, undoubtedly, it would be modified upon further hearings. I am making a rather long answer to your question, but I think that what we have here, as a result of that investigation, in No. 12964, consolidation of railroads, and the little experience which we have had already with applications for authority to acquire control under paragraph (2) of section 5, and the processes of education which have been going on throughout the country and among the carriers, will suffice to keep that aspect of the question—whether what is here contemplated will fit in with the rest—prominently in the minds of those who apply to us or oppose applications, and of those of us who have to sit on the bench and decide.

Mr. HOCH. I was not a member of the committee when the transportation act was passed, but I assume that those who framed paragraph (4) of section 5 framed it under a fear that if the commission were simply turned loose to approve any particular projects, we might not have a harmonious system in this country. I am only asking this question because we are now asked to abandon that policy.

The CHAIRMAN. It was not done.

Mr. HOCH. The bill did not, but I assume that was the idea of the framers of paragraph (4) of section 5. I see the objection to it, but I think it should be made pretty clear, because we are plainly abandoning that policy here in repealing paragraph (4).

The CHAIRMAN. That question was thoroughly discussed on the floor of the House, and it was thoroughly discussed in this committee.

Mr. HOCH. Of course, that simply argues that the committee was wiser than the conferees, because we are now reversing the conferees. I am willing to assume that.

Mr. THOM. You admit that.

Mr. HOCH. Yes, I admit it!

Mr. LEA. In reference to your answers in response to Mr. Hoch's questions as to the valuation for rate-making purposes on account of the consolidation of those roads which are weak roads operating on an uneconomical basis, we have this question as to where the loss is going to be placed. If we permit the strong roads to acquire those weak ones at a fair valuation, that, in substance, transfers the loss to the stockholders of the weak roads, I take it. That is substantially true, is it not?

Mr. HALL. It does not transfer the loss. They realize their own loss.

Mr. LEA. It is placed on them as their loss, and there it justly rests. I take that to be true.

Mr. HALL. Yes, sir.

Mr. LEA. This weak road has a rate-making value of $6,000,000, and it has a turnover value or a take-up value of $3,000,000: Now, why should that road be given a $6,000,000 valuation for rate-making purposes when taken by a strong road, and when the loss has been thrown upon the stockholders of the weak road? What justification would there be in giving a rate-making value of $6,000,000 to that road, when it is taken over or when it is acquired for $3,000,000?

Mr. HALL. That depends upon your conception of the meaning of a rate base. If the rate base represents what the carrier would, under a reasonable adjustment of rates, be authorized to earn and keep—if that is what you mean, then I do not see any reason why that road should change its rate base because it passes from the hands of one owner to the hands of another.

Mr. LEA. But for rate-making purposes, that weak road would have a valuation in excess of its earning capacity.

Mr. HALL. Yes, sir; and that is true of many roads.

Mr. LEA. That is with the idea of encouraging the stockholders to maintain the weak road.

Mr. HALL. I do not think so at all.

Mr. LEA. And give the public the benefit of transportation.

Mr. HALL. No, sir. This weak road you speak of may not be earning anything like a fair return upon $6,000,000, if that is what you name as the rate base. It may not be earning operating expenses. The meaning of the rate base is that if the condition of that weak road so changes that it is able to earn a return of more than 6 per cent on the $6,000,000, it is entitled to keep up to that 6 per cent on $6,000,000, instead of computing 6 per cent on $3,000,000 or $1,000,000, or upon its scrap value, whatever it may be, or even $100,000.

99790—26——11

Mr. LEA. My question was on the assumption that it continues to be a weak road, and fails to make a return on $6,000,000. We will assume that it is still weak, and a comparatively nonproductive road. after it is taken over by the strong road. Why should that old rate-making value, when it is taken over by the new company, be continued? Is not this placing a burden on the shippers of the country by the transfer, when they should get the benefit of it? Those stockholders have built an uneconomical road, and they have suffered the loss when they transferred it for less than it cost them; but, instead of giving the shippers of the country the benefit of the reduced price at which the road was actually acquired, the rate-making value in the custody of the strong road is fixed on a basis in excess of what they actually paid for it, and when there is no doubt about what it costs. What justification is there for that?

Mr. HALL. The justification seems to lie in the distinction between rate value, or value for rate-making purposes, and the exchange value. If there is no justification for that distinction, then there would not be any justification for it here.

Mr. LEA. I think there is a justification for that in the case of the weak road, but where the road has no fictitious value with the strong road, and there is no doubt about what it cost, why should it be given a rate-making value in excess of the known cost? There is no necessity for encouraging the protection of that road under that general provision which is in the interest of the weak road.

Mr. HALL. I do not look upon these provisions as to valuation as relating to encouragement or the reverse, but as an attempt to ascertain the economic value. Our work in the bureau of valuation has been pursued with that thought in mind, as I understand it, in endeavoring to ascertain what is the rate-making value of the property of a carrier devoted to public use. I have used as an illustration the case of a weak road, where its value in exchange might be very much less than its rate-making value, and the reverse of that may be true. You may find a very prosperous and very profitable road, the value in exchange of which will greatly exceed its rate-making value. We have got to use the same rule. You can not say, "If you are prosperous we will apply one method to you, and if you are not prosperous, we will apply another."

Mr. LEA. Of course, a general purpose, or at least one purpose, of rate making is protection against excessive rates. In fixing the rate-making value, of course, we had to take the railroads as they were. I take it that, as a matter of necessity, the roads had to be given a rate-making valuation in excess of their earning capacity.

Mr. HALL. No.

Mr. LEA. Or a valuation for rate-making purposes in excess of what they were really worth, based on their earning capacity. That is to say, the value of the railroad to the stockholders was one thing, and the value for rate-making purposes was another. We did give, a rate-making value in many instances in excess of the stock value.

Mr. HALL. And in many instances it was lower.

Mr. LEA. Possibly that is true; but, at the same time, it was with the idea of encouraging and maintaining the transportation system. When we know exactly what the road costs, I do not see that there is any necessity of giving that road a rate-making valuation in excess of what it did cost. That would be the case here. The taking

over of a weak road by a big road means that the stockholders of the weak road must bear the economic loss. When it is transferred to a strong road, why should it be given a rate-making value greatly in excess of what it actually cost? It is a fictitious valuation that forces the public to bear the expense of it. That may be necessary, but my question is, what is the justification for it?

Mr. HALL. It is a rather confusing thing, I agree. Still, the case is not one of value in the hands of a weak road as contrasted with value in the hands of a strong road. The value, whether it be for rate-making purposes or whether it be for exchange purposes, may or may not approximate the cost. It may be very different. If the rate-making value of a railroad has been determined by us to be $6,000,000, you say that because it is sold to a new owner for a less amount, say $3,000,000, to use your illustration, its value for rate-making purposes somehow has been changed. I do not see why. Why has it been changed? The owners have changed, but not the property.

Mr. LEA. In the hands of the original stockholders the valuation represented an actual investment, but in the hands of the new company it does not.

Mr. MERRITT. The original stockholders may have changed.

Mr. LEA. But this is the company. The original valuation represents the actual investment, anyway. In the second case it does not represent the actual investment, but the public has to pay the same rate in either case.

Mr. HALL. Yes; but that figure of $6,000,000 which you have been using is the value of the road for rate-making purposes, as property of the carrier devoted to public use. That may bear some relation to the original cost, or it may bear some relation to the cost of reproduction new or less depreciation, or it may or may not bear some relation to value in exchange. What those relations are you can not determine a priori, but only from the facts established of record.

Mr. LEA. I take it for granted that for a railroad economically constructed, the commission would allow a rate-making valuation sufficient to cover the cost of a road so constructed.

Mr. HALL. We have to be governed by the record in those cases. We are really finding the value of the property and not the value of an owner's interest in the property. I do not quite see why the value of that property for rate-making purposes should change because it changes owners.

Mr. LEA. Of course, the idea of rate making is to compensate those who have invested their money in transportation utilities.

Mr. HALL. Mr. Justice Brandeis would have us deal with it on the basis of prudent investment, but until now the Supreme Court has not accepted that view, which leaves Mr. Justice Brandeis in the position of being a dissenter.

Mr. CROSSER. As a practical question, what do you think would be the effect of allowing the consolidation or unification of the larger or more powerful railroads with what I would call the weak roads, so far as the ultimate or lasting valuation is concerned, for the purpose either of taking them over by the Government or making rates? Suppose you take over a weak road, or a more or less useless

road, so far as its value is concerned, would not the action of the commission have a very practical effect in giving it a valuation that really would not be there at all?

Mr. HALL. It might give the road an exchange value which would be greater because of the greater use. Is that what you mean?

Mr. CROSSER. Not exactly that. I am assuming, for instance, that the commission might make a mistake.

Mr. HALL. You may assume that.

Mr. CROSSER. It might give a valuation that I could not agree with, for example. Now assume that the Government might want to take it over: Have you not by your action given that part of the system or section of railroad a valuation which the owners could probably insist upon pretty strenuously in a condemnation proceeding?

Mr. HALL. That would be a far cry from this, and I have not considered that question. If we ever get around to the point where the Government proposes to take over and own, or own and operate, the railroads of the United States, the basis on which it takes that step will have to be determined at that time, I think.

Mr. CROSSER. Of course, I know that question would have to be determined. I am not advocating what you seem to think, but I am trying to make my question clear. Assuming that the Government for some reason wanted to take them over, of course it would have to compensate the owners; but would not your adjudication of the value of a road that might now be considered as more or less useless have a very decided effect, if not a binding effect, upon the institution condemning it?

Mr. HALL. If the strip taken over in consolidation—we will say, for convenience, that it is 100 miles of road—remains in the same condition from the time it is taken over until the Government comes around and takes it, it might be that the value we arrived at, whether for rate-making purposes, in one case, or its value in exchange, in the other case, would be treated as an evidential fact, but, if it went into the hands of a live system, the chances are that the 100-mile strip, in the course of time, would be very materially changed, in its equipment, its construction, and its traffic. New communities would probably spring up along the line, and it would be a different thing. I think that the value we might have made for it at that first stage would have become obsolete.

The CHAIRMAN. We will now adjourn until to-morrow morning at 10 o'clock.

(Thereupon, at 12 o'clock noon, the committee adjourned until to-morrow, Friday, June 4, 1926, at 10 o'clock a. m.)

RAILROAD CONSOLIDATION

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Friday, June 4, 1926.

The committee met at 10 o'clock a. m., Hon. James S. Parker (chairman) presiding.

The CHAIRMAN. The committee will please come to order.

STATEMENT OF BEN B. CAIN, VICE PRESIDENT AND GENERAL COUNSEL OF THE AMERICAN SHORT LINE RAILROAD ASSOCIATION, WASHINGTON, D. C.

Mr. CAIN. For the record, my name is Ben B. Cain. I appear as vice president and general counsel of the American Short Line Railroad Association, and I shall add to that statement, as showing my qualifications to speak for short-line railroads, that from 1908 up to 1918 I had complete control of the management of a short-line railroad which was built in the State of Texas, about 100 miles long, the Gulf, Texas & Western, and from 1918 up to the present time I have been in Wahington most of the time dealing with the affairs of from 450 to 500 short-line railroads varying in number from one year to another.

At present there are 464 of those short-line railroads that I represent, or rather that are represented by the organization of which I am general counsel, and in that way I think I am fairly familiar with the short-line railroads as they are affected by any proposed legislation.

This bill, Mr. Chairman, proposes to make important and, I think, needed changes in the existing law. I have before me a list of independently owned short lines of the United States, revised to June 1, 1926.

There are in this list of railroads 625 short lines and there are short lines in every State of the Union except three—Delaware, Nebraska, and New Hampshire.

I can well understand that a citizen living in a State or in a community served by strong railroads and not served by one of the short and weak lines may overlook or have an improper understanding of the importance of that road to people who are solely dependent upon it.

People in the State of Nebraska, for instance, have no concern except that which every citizen has, in the preservation of a short and weak railroad, whereas in my own State of Texas, where there are 43 of these short and weak railroads, it is a matter of great importance that whatever legislation is proposed shall take that character of roads into consideration.

We are prone to regard a short and weak railroad as important only to the people that live along that line and that are dependent upon it. Of course, there lies the greatest interest, but there is a broader interest than that, which I desire to point out to you preliminary to a general statement which I am going to make.

Mr. HUDDLESTON. May I interrupt for a question? Just what do you mean by short lines?

Mr. CAIN. For the purpose of this discussion, Mr. Huddleston, I would suggest that we consider a short line as an independently owned railroad not exceeding 500 miles in length.

Mr. HUDDLESTON. Five hundred?

Mr. CAIN. Yes, sir. I think that will fairly cover what we commonly refer to as short-line railroads. Of course, there are weak railroads that are not included in the class of roads that I have here.

Mr. HUDDLESTON. That definition might explain why there are none in Delaware and many in Texas.

Mr. CAIN. I did not catch the question.

Mr. HUDDLESTON. That definition might explain why there are none in Delaware and many in Texas.

Mr. CAIN. Well, possibly it does. It might run out into the ocean in Delaware—I do not know.

Mr. MAPES. Do not the earnings of the road have something to do with the designation?

Mr. CAIN. No; not in so far as their length is concerned. Of course they are classified under the Interstate Commerce Commission's classification as class 1, class 2, and class 3 railroads, and a majority, a great majority of these short-line railroads that are listed here are in classes 2 and 3.

Mr. MAPES. A short line may be in class 1?

Mr. CAIN. As I will show you before I am through, there are a number of short-line railroads that are in class 1 and are subject to the recapture.

I was about to point out to the committee the importance of these short-line railroads, the function that they serve in the general transportation system of the country.

I do not think that a community or an industry served by one of these short-line railroads, no matter how short it is, and no matter how obscure it may be in the general transportation system, can afford to be without steam railroad transportation. And I do not think that Members of Congress can or will overlook what would happen to the various communities that are served by these 625 short-line railroads listed here if anything should be done in the way of legislation that would have the effect of destroying or even greatly injuring that character of service.

When these railroads are built, of course, they are pioneers. Most of them lie out in the thinly populated sections of the country and are in the nature of tributaries to the general stream of transportation that flows to the great markets of the country.

When these roads were built—and a number of them were built to serve industries, it is true—a great many of them were built by the communities that they served. Prosperous sections of the country found it necessary, in order to get in touch with the transportation system of the country, to build their own railroads, as was done in Paris, Tex., the State from which I come, and as was done in the case of my own railroad, the Gulf, Texas & Western.

There is that class of commercial carriers built by the people and when they were built, built, as I say, in the more remote sections.

As soon as a railroad begins construction, or began construction, so far as my information goes—and I have considerable—the people left other sections, more populous sections of the country, and went out along those little roads that were projected farther away, where land was cheap, and they located themselves.

Communities grew up. Industries were established. Banks and schools and churches were established and they are entirely dependent upon the continuance of that character of service, if they are to be able to compete commercially with other sections of the country.

Of course, we all know that the service given to the localities in which these roads lie is extremely important, but we overlook another phase of it, and that is the importance of these several hundred short-line railroads to the general transportation system of the country.

Let me illustrate: Using my own road, which is a hundred mile road—I say "my own" as indicating the Gulf, Texas & Western, in which I am substantially interested—I may originate a carload of cotton on that road. I can not haul that cotton more than a hundred miles, if I started at one end of the road and carried it to the other. I may haul it a hundred miles or I may haul it only 10 miles—certainly not over a hundred. That cotton was grown by the man who went along by the side of that road and located his farm and it was shipped by the people who do business on that line of road. All the haul I can get on it is to the junction of one of the trunk lines with which that road connects. I take it to that junction. I collect it and carry it there and deliver it on a transfer track and I have done all of the duty and gone to all of the expense of collecting it and loading it and booking it and preparing it for its trip from the field to the consumer or rather to the manufacturer.

When it gets to the junction, the trunk-line railroad with which that little road connects takes that car and puts it in its train and carries it to another break-up point—say St. Louis—and at St. Louis it is taken over by another trunk line, the B. & O. or the Pennsylvania, and it is carried up to New England and turned over to the New Haven or some road there and carried to the manufacturer.

The cost of transporting that traffic from the field to the factory has been divided necessarily with the carriers who performed the service in taking it to its destination. My part is necessarily small compared with the whole cost of the movement of that car. Hence, you see, the carriers between the manufacturer and me have shared in that carload traffic, but that is not all. The manufacturer takes it and weaves it into cloth, and he starts it out from his factory at New Haven or at some point in New England, I will say, and that cloth goes back over the lines of the B. & O. and the New Haven and the Missouri Pacific or the Santa Fe and finds its way to the consumer. It may be right back by the side of the little road that started it on its way, or it may be back to the Hawaiian Islands before it finds its consumer.

From the beginning to the consumer freight has been paid upon that carload of cotton that comes from the side of that little road. I assert with confidence, gentlemen, that if you did not have these 625 feeder lines which, like the little stream that starts in the mountain and that, added to another little stream and another little stream, makes the great stream that carries upon its bosom the burdens of commerce, you would not have any transportation system in this country that you could be proud of.

These are gathering lines or feeder lines that do their part, small it may be singly, but large collectively in furnishing to the great railroads of the country the volume of transportation that makes it possible for them to function and prosper.

Now, with that statement, I think you will appreciate, gentlemen, that there can be no more important problem as it affects the short-line railroads than the one with which we are dealing. There is no more important problem of our national life, none so big and so complex and so fraught with weal or woe to the general interest as this matter of adequate transportation service.

In order that I might save time, I have prepared a statement which I want to present to you and I should like, if I may, to follow it consecutively before the committee ask me questions, if that can be done.

I think, Mr. Chairman, that you can not properly and fairly consider this kind of legislation unless you go back and make a survey of the existing law and how existing law has been interpreted and applied to the railroads of the country under present conditions.

I am anxious to present a picture and I want to show in that picture the location of these short-line railroads so that you may determine the effect of this legislation and whether or not the suggestions I make have any merit in them.

The CHAIRMAN. I shall ask the committee to respect your wishes.

Mr. CAIN. Thank you, sir.

In the report by the Committee on Interstate Commerce, submitted to accompany S. 3840, April 5, 1926, that committee, amongst other things, said:

> In the continental United States there are (using round numbers) 250,000 miles of single main track railway. There are 40,000 miles of second, third, and fourth main tracks; 116,000 miles of terminal, switching, side, and passing tracks, aggregating 406,000 miles. There is the roadbed upon which these tracks rest; the bridges, culverts, and tunnels over which and through which they pass. There are 70,000 locomotive engines; 58,000 cars used in passenger trains, exclusive of sleeping, parlor, dining, and privately owned cars. There are 2,500,000 freight cars, not including freight cars owned by private enterprises. There are almost an infinite variety and number of station houses, round houses, machine shops, elevators, warehouses, and office and other buildings that can not be specifically enumerated but can be easily visualized. These tracks and their facilities constitute more than one-third—nearly one-half—of all the railway tracks and facilities of the whole world, and over these tracks and with these facilities there is moved every year more than half of the railway freight and almost one-half of the passenger traffic of the earth.
>
> * * * * * * *
>
> These tracks and facilities are owned by about fifteen hundred and are operated by about a thousand separate and independent railway companies. Of these companies about 190 (the number varying from year to year) are classified by the Interstate Commerce Commission as roads of class 1. This means a road whose annual gross operating revenue is a million dollars or more. These roads represent a single-track mileage of about 236,000 miles. The remaining mileage is distributed among the roads of class 2 and class 3 with revenues less than $1,000,000 per year.

There are two features of this report that are particularly important in connection with the situation of the short line railways. to which I call your attention. The committee said:

> The evidence submitted to the committee showed beyond controversy that no considerable part of our railway mileage can be abandoned.

Then in another place:

> First, it may be said that the 22,000 miles of class 2 and class 3 roads, as a whole, barely earned operating expenses although there was moved a greater tonnage in each of these years than ever before. Specific illustrations of the situation will be confined to class 1 roads, which carry about 96 per cent of our entire traffic.
>
> Seventy railway companies of class 1, operating over 54,000 miles for the years 1922, 1923, and 1924, had an average net railway operating income of less than 3 per cent upon their property investment accounts. We used the property investment account because the Interstate Commerce Commission has not yet finished its valuation of all these properties. Twenty-one of these companies did not earn the cost of operation and maintenance. It is obvious that a railway company that earns less than the expense of operation and maintenance must very quickly cease operations, and it is equally obvious that a railway company which does not earn 3 per cent upon its value can not furnish adequate and efficient transportation for those who rely upon it for that service. A table, showing the names, mileage, yearly net operating incomes for the three years mentioned is attached to this report.

In that connection, Mr. Chairman, I presume it would not be necessary to this committee or to the Congress to insert that, because you will perhaps have available the report of the Senate committee. If it is not available, however, I think it would be enlightening if the list of roads to which the Senate committee alludes were incorporated in this record. I leave that for you gentlemen to determine.

In addition to the list of roads referred to in the report of the Senate committee, which list I think might well be incorporated in this record, which are all class 1 roads, I have before me a revenue survey of 525 short-line railroads, compiled from reports made to the commission for the years 1921, 1922, and 1923.

I should explain to you gentlemen that those three years were the only years that we found available at the time this survey was made, because the short lines do not make prompt reports to the commission, and the commission does not get out a tabulation of these reports as they do of the class 1 roads. Hence, we had to go into the records and get it as best we could. I think that those three years, however, are fairly representative of any three years that might be selected for the study.

In this compilation the term "short line railroad" is defined to be a railroad not exceeding 500 miles in length, not owned and/or operated as part of or a link in a general steam railroad system of transportation. For convenience, the list of roads alluded to is divided into three classes: Class A, roads which earn more than $10,000 per mile gross revenue for the average of the three-year period; class B, roads which for the three-year period earned more than $5,000 and less than $10,000 per mile of operated road; and class C, roads which for the average of the three-year period earned less than $5,000 per mile of operated road. The total number of roads of the several classes mentioned are as follows: Class A, 84 roads; class B, 122 roads; class C, 319 roads. A study of the 84 class A short-line railroads will show you that a number of them are excess earners, therefore subject to the recapture provisions of 15–A.

This study which I am going to ask to have incorporated in the record shows what each short-line railroad earned for the average of the three-year period, and an examination of it will show that there are a number of these railroads that are class 1 roads, and some of them earn as much as between $25,000 and $30,000 per mile average for the three years. So that that necessarily means participation in any distribution of the excess revenues either by divisions or through the recapture.

May I have that incorporated in the record?

The CHAIRMAN. Certainly.

Mr. MERRITT. Is the witness speaking of short-line roads or only those in the association?

Mr. CAIN. All short-line roads.

(The statement referred to is as follows:)

Revenue survey of American short-line railroads for a test period of three years, 1921, 1922, and 1923

Computation.—In computing the earnings per mile, less than 1 mile or one-half dollar were not considered. More than one-half mile or one-half dollar were considered as 1 mile and $1, respectively. Thus 148.72 miles is taken as 149 and $5,480.65 is taken as $5,481.

Value is the book value.

Mileage.—The mileage operated in 1925 has been taken throughout unless there was a material difference in another year, when it is shown by explanatory sign.

Authority.—The mileages and annual earnings have been taken from the annual statistical reports of the railways of the United States compiled and issued annually by the Interstate Commerce Commission from the sworn annual reports of the individual carriers.

The term "short-line railroad" means a railroad not exceeding 500 miles in length, not owned and/or operated as part of, or a link in, a general steam railroad system of transportation, and whose average annual operating income for the last consecutive three-year period does not exceed $10,000 per mile of operated road.

CLASS A

[This class is considered for the convenience of general counsel's office, and includes those roads which conform to the definition of short lines in mileage, but earn more than $10,000 per mile]

Average miles operated	Railroad	Gross operating revenues for—			Revenue per mile of road operated			Average per mile of road, 3 years	Value
		1921	1922	1923	1921	1922	1923		
170.95	Akron, Canton & Youngstown	$1,658,542	$2,209,489	$2,695,136	$9,699	$12,921	$15,761	$12,794	
141.49	Alabama & Vicksburg	3,397,144	3,063,635	3,464,104	24,093	21,728	24,395	23,405	
6.72	Aransas Harbor Terminal	115,593	91,671	54,080	16,513	13,096	7,726	12,445	
1.50	Augusta Railroad	24,222	23,691	23,683	12,111	11,845	11,841	11,932	
2.23	Bauxite & Northern	21,645	48,350	80,036	10,827	24,175	40,081	25,007	
13.01	Brimstone Railroad & Canal Co	214,347	271,822	294,444	16,488	20,909	22,650	19,682	
37.65	Cambria & Indiana	791,591	824,040	1,221,043	20,834	21,685	32,133	24,884	
13.82	Campbell Creek R. R	232,011	132,689	227,526	16,572	9,478	16,252	14,101	
3.82	Cement, Tolenas & Tidewater R. R	93,871	102,850	114,773	23,468	25,713	28,693	25,958	
6.80	Cheat, Hanen & Bruseton	(1)	(1)	84,432	(1)	(1)	12,062	12,062	
12.87	Chestnut Ridge R. R	153,657	177,987	183,381	11,820	13,691	14,106	13,206	
30.85	Chicago & Illinois Midland	908,138	758,049	860,996	29,295	24,453	27,774	27,174	
321.70	Cincinnati, Indianapolis & Western R. R	3,716,572	4,363,694	4,629,344	11,542	13,552	14,377	13,157	
28.00	Cisco & Northwestern	588,835	342,266	263,080	21,030	12,260	12,931	15,407	
42.99	Colorado & Wyoming	726,960	800,256	987,713	16,906	18,611	22,970	19,496	
12.67	Cornwall R. R	251,623	489,726	665,161	19,236	37,671	51,666	36,024	
56.83	Cumberland & Pennsylvania	724,829	448,943	690,237	12,716	7,876	10,355	10,316	
5.00	Dardenelle & Russellville	77,947	44,813	56,498	15,589	8,963	11,300	11,951	
25.39	Dayton—Goose Creek	370,019	374,099	380,664	14,801	14,964	15,227	14,997	
455.78	Detroit, Toledo & Ironton	6,453,669	9,004,474	10,407,412	14,152	19,769	22,823	18,915	
279.15	Duluth & Iron Range	4,972,513	6,818,856	7,768,817	28,026	24,439	27,845	26,770	
305.37	Duluth, Missabe & Northern	12,374,949	14,976,812	22,253,554	40,574	49,104	72,962	54,213	
10.19	El Dorado & Wesson	194,323	190,450	258,964	19,432	19,045	25,896	21,458	$120,335
4.56	Fairport, Painsville & Eastern	105,229	141,869	149,432	21,046	28,374	29,880	26,433	170,725
31.62	Fonda, Johnstown & Gloversville	1,355,659	1,409,648	1,471,219	42,364	44,052	45,976	44,131	
17.52	Gennessee & Wyoming	536,214	617,055	605,327	29,790	34,281	33,629	32,567	386,810
10.99	Greenbrier & Eastern	(2)	86,410	152,641	(2)	7,855	13,877	10,866	
15.14	Gulf & Sabine River	155,827	213,088	189,663	10,388	14,206	12,644	12,413	
74.11	Huntington & Broad Top Mountain	1,042,392	807,047	987,974	14,086	11,055	13,351	12,831	
22.45	Illinois Terminal Co	900,173	1,083,461	1,342,799	40,917	49,203	61,036	50,719	
65.12	Interstate R. R	756,128	885,647	1,266,844	11,633	13,625	19,490	14,916	
15.37	Kanawaha, Glen Jean & Eastern R. R	163,064	166,866	206,614	10,871	11,124	13,774	11,923	651,500
9.10	Kansas City & Gulf (Texas)	177,334	156,616	147,685	19,593	17,402	16,409	17,801	

6.55	Kelleys Creek & Northwestern	156,537	123,011	200,713	26,090	20,502	33,452	26,681	
19.68	Kentucky & Tennessee	347,462	329,192	400,101	18,287	16,460	20,005	18,251	
10.94	Lakeside & Marblehead	139,652	173,377	261,367	12,696	15,760	23,761	17,416	
33.43	Lake Superior & Ishpeming	411,615	1,073,498	1,277,151	12,473	32,530	38,701	27,901	
96.60	Lehigh & Hudson River	3,242,291	2,412,760	3,117,709	33,426	24,857	32,141	30,141	
43.97	Litchfield & Madison	575,961	681,981	767,202	13,090	15,499	17,438	15,342	
16.00	Ligonier Valley	561,820	344,801	323,373	22,614	21,515	20,211	21,458	
302.25	Louisiana & Arkansas	3,380,764	3,294,233	3,796,300	11,195	10,908	12,571	11,558	
99.20	Louisiana & Northwestern	1,084,250	1,695,440	997,350	10,952	17,126	10,078	12,719	
3.42	Mansfield Railway & Transportation Co	53,827	42,032	39,838	17,942	14,011	13,279	15,077	
12.50	Marion & Eastern	180,590	142,475	193,164	13,981	10,960	14,859	13,237	
80.69	Maryland & Pennsylvania	801,769	818,334	921,140	9,899	10,103	11,384	10,462	
12.45	Miami Mineral Belt R. R	189,279	193,922	262,529	15,773	16,160	21,877	17,937	
365.31	Midland Valley	4,462,757	4,661,004	4,500,147	12,227	12,770	12,329	12,442	
63.89	Mississippi River & Bonne Terre	973,798	972,451	947,810	15,216	15,190	14,810	15,072	3,551,550
5.20	Modesto & Empire Transportation Co	92,335	91,715	98,274	18,467	18,343	19,655	18,822	
57.47	Montour R. R	1,408,940	1,138,757	2,368,202	24,683	19,978	41,547	28,736	
12.96	Morristown & Erie	135,164	159,355	169,433	10,397	12,258	13,033	11,896	
1.79	Meshassuck Valley	77,388	37,219	78,575	38,694	37,219	39,287	38,400	160,404
8.03	Narragansett Pier	84,496	90,567	94,960	10,562	11,321	10,620	10,838	
8.24	Northampton & Bath	153,949	238,837	323,363	19,244	29,855	41,040	30,046	
35.96	Oklahoma, New Mexico & Pacific	569,105	566,481	527,675	15,808	15,735	14,658	14,400	
19.57	Okmulgee Northern	298,138	(3)	223,185	14,907	(3)	11,159	13,033	
18.39	Osage Ry	(1)	215,617	352,579	(1)	11,978	19,588	10,522	
5.15	Peoria, Hanna City & Western	(1)	(1)	78,401	(1)	(1)	15,680	15,680	
102.98	Pittsburg, Shawmut	1,272,092	1,090,985	1,264,602	12,350	10,592	12,277	11,740	
19.08	Port Huron & Detroit	(4)	(5)	245,650	(4)	(5)	12,929	12,929	
23.20	Raritan River Ry	419,786	553,529	544,302	18,252	24,069	23,665	21,995	
8.94	St. Louis & O'Fallon	590,792	491,792	540,524	65,644	54,644	60,058	60,115	
11.68	St. Louis & Ohio River	96,229	143,982	246,946	8,020	14,398	20,582	14,333	
25.91	St. Louis, Troy & Eastern	715,943	588,692	530,310	27,536	22,488	20,397	23,474	
3.90	Sandersville R. R	36,818	43,019	57,322	9,204	10,755	14,330	11,430	
31.60	Sandy Valley & Elkhorn	350,169	493,423	574,736	10,943	15,419	17,961	14,774	
47.10	Sewell Valley	399,401	445,120	566,253	8,498	9,471	12,048	10,006	633,266
76.11	Sierra Railway of California	721,031	1,273,482	697,472	9,487	16,756	9,177	11,807	
1.94	South Manchester Ry	36,754	38,277	50,630	18,377	19,138	25,315	20,943	
5.00	Skaneateles R. R	68,116	82,478	95,961	13,623	16,496	19,592	16,570	
7.27	Tooele Valley	40,248	84,933	169,346	5,750	12,133	24,191	14,025	
128.88	Ulster & Delaware	1,747,687	1,652,803	1,742,002	13,509	12,812	13,504	13,275	
102.18	Utah Ry	1,213,535	1,769,643	1,657,644	11,897	17,349	16,252	15,166	
6.16	Upper Merion & Plymouth	123,246	220,247	401,267	20,541	36,708	66,878	41,375	
10.87	Verde Tunnel & Smelter	76,701	197,205	384,349	6,973	17,928	34,941	19,947	
184.21	Vicksburg, Shreveport & Pacific	4,151,552	3,717,970	4,460,579	22,563	20,206	24,242	22,337	
5.00	Ware Shoals Ry	39,371	55,233	56,839	7,874	11,047	11,368	10,096	
3.00	Warrenton Ry	35,397	41,237	45,708	11,799	13,746	15,260	13,602	
4.00	Washington Run	83,792	55,857	97,641	20,948	13,964	28,820	21,244	
11.07	West Virginia Northern	95,185	187,248	180,457	8,653	17,023	16,405	14,027	
21.81	Wharton & Northern	311,582	311,803	465,740	14,163	14,176	21,170	16,503	
4.20	Wildwood & Delaware Bay Short Line	150,185	137,721	124,807	37,546	34,430	31,202	34,393	
36.77	Youngstown & Ohio River	551,116	473,083	531,133	14,895	12,759	14,355	14,003	
27.06	Montana, Wyoming & Southern	328,664	312,864	299,574	12,173	11,588	11,095	11,616	

[1] No report. [2] Six months only; no report. [3] Seven months only; sold [4] Leased. [5] Three months only.

Revenue survey of American short-line railroads for a test period of three years, 1921, 1922, and 1923—Continued

CLASS B

[Being those roads which for the test period 1921–23 averaged more than $5,000 and less than $10,000 per mile of road operated]

Average miles operated	Railroad	Gross operating revenues for—			Revenue per mile of road operated			Average per mile of road, 3 years	Value
		1921	1922	1923	1921	1922	1923		
186.00	Alabama, Tennessee & Northern	$959,570	$848,632	$988,684	$5,159	$4,563	$5,316	$5,013	
12.00	Amador Central	76,992	80,989	65,896	6,146	6,749	5,475	6,313	
10.00	Appalachian Ry	72,753	80,979	93,176	7,272	8,098	9,318	8,230	
12.90	Aronta & Mud River	104,556	121,207	131,895	8,043	9,324	10,146	9,117	
40.65	Ashley, Drew & Northern	190,074	261,106	263,546	4,636	5,271	6,428	5,445	
17.00	Batesville Southern	174,661	107,107	59,093	10,274	6,300	3,476	6,683	
8.19	Bay Point & Clayton	(1)	(1)	45,773	(1)	(1)	5,222	5,722	
7.01	Beaver, Meade & Englewood R. R	57,243	38,454	12,616	8,171	5,493	1,945	5,205	
10.19	Benier & Southern	61,357	46,600	75,562	6,136	4,660	7,556	6,117	$217,550
24.00	Big Sandy & Kentucky River	82,489	135,827	192,504	3,437	5,660	8,021	5,706	
34.80	Bingham & Garfield	178,322	237,324	456,242	5,381	6,781	13,035	8,399	
48.50	Birmingham & Northwestern	229,957	250,135	301,243	4,693	5,105	6,148	5,315	
6.14	Bristol R. R	29,820	29,113	32,469	4,970	4,852	5,412	5,078	108,600
253.54	Buffalo & Susquehanna	2,052,782	1,676,044	2,780,877	8,082	6,402	10,948	8,477	
19.20	Buffalo & Union Car	(1)	101,646	113,889	(1)	5,350	5,994	5,672	
13.80	Cairo, Truman & Southern	60,311	80,581	99,802	4,308	5,756	7,129	5,731	
7.94	California Central	31,273	53,121	60,919	3,909	6,640	7,615	6,055	
42.85	California Western R. R. & Navigation	336,331	300,984	306,156	7,822	7,000	7,120	7,314	
133.50	Carolina & Northwestern	689,311	819,763	913,089	5,144	6,118	6,820	6,027	
10.00	Carrollton & Worthville	43,739	53,124	55,219	4,374	5,312	5,522	5,069	
11.69	Central Ry. of Arkansas	65,759	65,913	63,490	5,480	5,493	5,291	5,421	201,885
103.89	Charlotte Harbor & Northern	607,716	627,687	728,375	5,843	6,035	7,003	6,294	
44.52	Chattahoochee Valley	225,233	226,767	260,072	5,005	5,039	5,779	5,274	
28.32	Chesapeake Beach	183,177	182,063	161,702	6,542	6,502	5,539	6,194	765,000
53.70	Cincinnati, Georgetown & Portsmouth	328,647	328,218	296,605	6,086	5,893	5,493	5,824	
20.28	Clarendon & Pittsford	156,441	149,069	184,148	7,822	7,453	9,207	8,161	
27.00	Columbia, Newberry & Laurens	613,467	610,824	672,374	8,180	8,144	8,965	8,430	
113.62	Copper Range R. R	1,188,708	1,028,158	906,854	10,427	9,019	7,955	9,134	
18.32	Cowlitz, Chehalis & Cascade	(1)	125,302	173,738	(1)	6,961	9,654	8,308	
5.59	Craig Mountain R. R	(1)	39,712	35,903	(1)	6,619	5,984	6,302	
25.59	Cumberland & Manchester	204,642	191,406	278,559	7,871	7,362	10,710	8,648	477,199
167.70	Columbus & Greenville	1,594,294	1,581,751	1,572,797	9,490	9,415	9,362	9,422	
16.00	De Kalb & Western	116,308	109,657	123,211	7,269	6,854	7,700	7,608	
255.18	Denver & Salt Lake	2,879,059	1,580,509	2,804,173	11,290	6,198	10,958	9,482	
375.84	Detroit & Mackinac	1,971,128	1,868,154	1,924,863	5,242	4,968	5,119	5,110	
6.00	Doniphan Kensett & Searcy	60,620	48,917	39,504	10,103	8,153	6,584	8,280	
58.97	Durham & Southern	497,400	516,324	583,454	8,431	8,751	9,889	9,024	
36.10	De Queen & Eastern	168,959	192,776	237,363	4,693	5,355	6,593	5,547	529,120

36.18	East Tennessee & Western North Carolina	276,452	316,650	531,630	7,679	8,796	11,961	9,479	
44.41	Fernwood, Columbia & Gulf	379,744	314,084	297,855	8,631	7,138	6,769	7,513	
5.60	Flemingsburg & Northern	36,148	35,190	38,409	6,096	5,865	6,402	6,098	
249.75	Fort Smith & Western	1,773,094	1,692,266	1,590,870	7,092	6,789	6,363	6,741	
7.20	French Broad R. R	29,374	48,440	51,945	4,196	6,920	7,421	6,179	
22.35	Glenmora & Western	142,042	168,746	179,052	6,456	7,670	8,139	7,422	
9.25	Goshen Valley	81,390	48,444	60,375	9,043	5,383	6,708	7,045	
86.84	Great Western	591,466	428,064	433,094	6,798	4,920	4,978	5,565	
14.82	Gulf & Northern	95,322	90,611	84,306	6,355	6,041	5,620	6,005	
5.52	Hickory Valley R. R	43,669	50,949	44,872	7,278	8,492	7,479	7,750	
5.49	Hillsboro & Northwestern	38,010	34,420	40,082	7,602	6,884	8,016	7,501	
10.47	Holton Interurban	49,068	73,113	90,825	4,907	7,311	9,083	7,100	
24.00	Hoosac Tunnel & Wilmington	126,204	181,979	240,282	5,258	7,582	10,112	7,614	
21.44	Iberia & Vermilion	127,646	122,473	134,998	5,802	5,832	6,428	6,021	
21.60	India Valley	121,046	125,016	121,567	5,456	5,683	5,526	5,555	
86.70	Jonesboro, Lake City & Eastern	632,396	612,865	710,601	7,269	7,044	8,053	7,455	
5.00	Kanawha Central	(1)	21,286	44,009	(1)	4,257	8,802	6,530	
314.42	Kansas, Oklahoma & Gulf	2,337,527	2,871,179	2,489,370	7,449	9,144	7,928	8,174	
2.00	Kinder & Northwestern	206,000	18,161	16,575	10,300	9,081	8,287	6,133	
29.00	Lancaster & Chester	164,400	190,532	195,596	5,959	6,570	6,710	6,316	
10.35	Louisville, Siagel & Eastern	74,055	73,328	75,488	7,406	7,333	7,549	7,429	
8.00	Little River R. R	36,709	45,499	53,541	4,589	9,081	6,893	6,854	
54.53	Louis & Pacific	435,422	375,582	344,287	7,917	6,829	6,260	7,002	
10.44	Louisville & Beaver River	60,719	71,456	71,524	6,072	7,146	7,152	6,790	
11.00	Lufkin, Hemphill & Gulf	74,734	68,304	61,311	6,794	6,209	5,514	6,170	117,072
94.22	Macon, Dublin & Savannah	656,355	679,599	735,583	6,982	7,299	7,825	7,369	
8.90	Manitou & Pikes Peak	51,596	72,675	102,035	5,733	8,075	11,337	8,382	
47.03	McCloud River R. R	323,886	488,724	540,747	6,891	10,398	11,505	9,598	
14.30	Middletown & Unionville	121,481	126,566	134,460	8,677	9,033	9,604	9,105	
71.38	Minneapolis, Northfield & Southern	351,912	505,165	690,884	4,957	7,115	9,731	7,268	
275.00	Mississippi Central	1,198,143	1,502,854	1,785,526	4,357	5,465	6,948	5,590	
139.05	Missouri Illinois R. R	(2)	861,424	1,223,610	(2)	6,212	8,803	7,508	
8.16	Monson R. R	18,774	13,990	24,088	2,334	13,990	3,011	6,445	77,113
2.76	Montana R. R	11,539	30,979	19,696	3,846	10,326	6,565	6,912	
7.00	Moscow, Camden & San Augustine	32,745	35,786	40,525	4,678	5,112	5,789	5,193	
22.20	Mount Hood R. R	117,902	124,754	138,949	5,359	5,671	6,316	5,782	507,032
3.60	Mount Hope Mineral	22,245	27,325	60,958	5,561	6,956	1,524	9,252	
30.00	Munising, Marquette & Southeastern	810,503	841,088	1,003,308	6,235	6,475	7,718	6,809	
16.78	Nelson & Albemarle	83,605	105,486	95,063	4,918	6,295	5,592	5,572	
20.65	Nevada County Narrow Gauge Ry	122,024	137,746	112,785	5,811	6,559	5,528	5,966	
10.62	Newaukum Valley	85,122	70,294	114,875	7,738	6,390	10,443	8,190	
10.00	New Mexico Midland	78,206	68,475	71,611	7,821	6,848	7,161	7,277	
274.69	New Orleans & Great Northern	2,528,529	2,547,751	2,841,010	9,195	9,265	10,331	9,587	
5.50	Norton & Northern	25,140	33,466	34,836	4,190	5,578	5,806	5,191	
18.02	Norwood & St. Lawrence	125,707	193,771	175,307	6,984	10,765	9,739	9,163	
24.10	Oklahoma Southwestern	177,478	174,188	150,842	7,382	7,258	6,702	7,114	
25.00	Oneida & Western	136,150	168,406	210,127	5,446	6,736	8,405	6,862	
53.60	Pacific Coast Ry	388,984	607,224	585,145	7,203	11,245	10,836	9,761	
25.34	Pearl River Valley	90,745	155,986	207,411	3,630	6,239	8,296	6,055	
25.65	Pittsburgh, Lisbon & Western	224,734	222,067	225,404	8,541	8,669	8,669	8,618	

[1] No report.

[2] Six months only; no report.

Revenue survey of American short-line railroads for a test period of three years, 1921, 1922, and 1923—Continued

CLASS B—Continued

Average miles operated	Railroad	Gross operating revenues for—			Revenue per mile of road operated			Average per mile of road, 3 years	Value
		1921	1922	1923	1921	1922	1923		
17.93	Puget Sound & Cascade	$92,919	$158,663	$162,725	$5,162	$8,813	$9,040	$7,612	
12.45	Rahway Valley	60,930	170,610	99,227	5,077	14,218	8,269	9,188	
49.77	Roscoe Snyder & Pacific	280,315	223,614	275,718	5,606	4,472	5,514	5,197	
55.91	San Joaquin & Eastern	339,000	593,395	593,321	6,054	10,596	10,595	9,082	$1,148,000
9.73	Santa Fe, Raton & Eastern	55,141	(2)	46,855	5,514	(2)	4,686	5,100	201,227
147.17	Savannah & Atlanta	701,549	(6)	1,067,291	4,772	(6)	7,260	6,016	
165.69	Spokane International	1,300,060	1,297,532	1,165,813	7,832	7,829	7,023	7,561	4,860,121
16.20	Stewardstown R. R	51,496	54,774	86,804	7,357	7,825	5,425	6,869	
62.66	Sugarland R. R	456,519	493,451	524,831	7,246	7,833	8,331	7,803	
79.63	Sumter Valley	328,621	511,536	482,229	4,108	6,394	6,029	5,510	1,829,745
67.72	Susquehanna & New York	331,611	360,628	374,507	4,877	5,303	5,507	5,229	
288.29	Tennessee Central	2,349,047	2,524,742	3,055,803	8,156	8,766	10,610	9,177	
161.85	Texas Mexican	1,170,919	1,112,794	1,542,700	7,229	6,869	8,967	7,688	
125.20	Texas Midland	1,052,113	944,645	948,818	8,417	7,557	7,591	7,856	
39.75	Texas, Oklahoma, Eastern	257,708	305,128	332,785	6,443	7,628	8,070	7,380	
40.13	Tionesta Valley Ry	345,404	316,463	315,451	8,635	7,912	7,886	8,144	
10.50	Toledo, Angola & Western	60,455	38,993	95,227	5,496	3,545	8,657	5,889	
247.70	Toledo, Peoria & Western	1,692,420	1,716,603	1,826,217	6,824	6,920	7,364	7,036	
72.75	Fremont & Gulf	615,863	571,848	613,492	8,436	7,834	8,404	8,225	1,222,430
29.00	Tuckertown Ry	151,997	148,538	136,047	5,241	5,122	4,691	5,018	
6.12	Tuskeegee R. R	37,324	(1)	58,469	6,221	(1)	9,745	7,983	
19.14	Unadilla Valley Ry	102,366	112,729	104,649	5,388	5,933	5,508	5,610	
24.27	Union Transportation Co	142,573	131,302	140,221	5,941	5,471	5,843	5,752	
67.48	Virginia & Truckee	430,292	516,145	442,748	6,422	7,704	6,608	6,911	
64.83	Wabash, Chester & Western	355,849	438,704	532,242	5,013	6,749	8,188	6,650	
16.00	Warren & Ouachita Valley	103,733	89,235	118,088	6,483	5,577	7,381	6,814	239,360
49.37	Washington, Idaho & Montana	198,508	265,383	328,168	4,051	5,824	6,697	5,524	
47.87	Western Allegheny	326,928	398,633	439,470	6,811	8,305	9,155	8,090	
103.10	Wichita Falls & Southern	424,964	672,458	745,744	4,126	6,529	7,240	5,965	
74.97	Wichita Falls & Fort Worth	1,081,765	574,165	609,999	12,020	7,656	8,133	9,270	
13.02	Winfield R. R	81,657	84,948	86,709	6,211	6,534	6,679	6,478	
6.00	Woodworth & Louisiana Central	33,293	33,224	25,879	5,540	5,537	4,313	5,130	
79.17	Yosemite Valley Ry	638,356	682,789	689,137	8,080	8,643	8,723	8,482	
3.25	Chaffee R. R	(1)	12,419	18,389	(1)	4,140	4,130	5,135	
44.90	Aberdeen & Rockfish	160,793	161,997	181,961	3,573	3,603	4,044		
96.79	Abilene & Southern	314,035	294,100	370,429	3,237	3,032	3,788		
21.00	Alabama & Northwestern	66,172	70,163	104,837	3,151	3,341	4,992		
13.10	Alabama Central Ry	34,310	56,058	51,135	2,639	4,312	3,933		
7.10	Alabama Northern R. R	23,667	24,983	27,419	3,382	3,560	3,917		
29.00	Alcolu R. R	57,399	73,145	104,616	1,979	2,522	3,607		

25.50	Andulasia, Florida & Gulf	32,351	37,618	39,565	1,244	1,447	1,522		
32.83	Angelina & Neches River R. R	91,063	98,509	107,365	2,759	2,985	3,253		
72.00	Apache Ry	97,460	103,049	187,670	1,354	1,431	2,606		
99.12	Appalachicola Northern	254,068	298,693	360,059	2,566	3,017	3,637		
28.36	Arcade & Attica	113,794	114,872	125,177	4,064	4,103	4,470		
17.30	Arcadia & Betsey River	20,162	20,575	16,417	1,186	1,210	967		
21.50	Arizona & Swansea	(1)	25,956	50,603	(1)	4,180	2,300		
20.52	Arizona Southern	5,231	5,033	35,254	249	240	1,678		
85.14	Arkansas & Louisiana Midland	208,909	287,129	422,930	2,458	3,378	4,976		
17.80	Arkansas Railroad	31,702	44,210	64,801	1,761	2,456	3,600		
32.10	Asherton & Gulf	76,763	74,928	63,379	2,399	2,341	1,981		
10.00	Athens & Tennessee River	(7)	3,054	13,880	(7)	305	1,388		
82.00	Atlanta & St. Andrews Bay	346,778	271,021	300,231	4,229	3,305	3,661		
9.52	Atlantic & Carolina	18,963	30,259	21,870	1,896	3,026	2,187		
24.00	Atlantic & Western	53,103	73,916	83,611	2,213	3,080	3,484		
17.07	Atlantic Northern	45,995	43,387	43,645	2,706	2,552	2,567		
11.20	Augusta Northern	35,692	37,665	51,568	3,245	3,424	4,689		
8.30	Alabama Central Ry	27,269	27,636	25,075	3,408	3,455	3,933		
14.40	Bamberg, Ehrhardt & Walterboro	26,922	27,299	34,917	1,923	1,950	2,494		
23.20	Bartlett Western Ry	(1)	(1)	32,821	(1)	(1)	1,427	1,427	
9.20	Bath & Hammondsport R. R	22,258	38,216	27,781	2,473	4,246	3,087		
1.42	Beaver Dam (Virginia)	2,908	6,152	5,605	2,908	6,152	5,605	4,888	
19.80	Bellefonte Central	69,702	107,639	115,614	3,485	5,382	5,781	4,883	
34.00	Bennettsville & Cheraw	105,402	88,450	106,149	2,473	2,601	3,122		
33.08	Big Sandy & Cumberland	139,119	165,156	172,231	4,216	5,005	5,219	4,813	
48.20	Birmingham & Southeastern	147,789	156,287	196,442	3,079	3,256	4,093		
38.00	Birmingham, Columbus & St. Andrews	28,018	38,018	49,949	737	1,000	1,314		
16.00	Birmingham, Selina & Mobile	43,345	38,031	43,321	2,709	2,377	2,708		
7.56	Blaney & Southern	35,422	29,225	24,058	4,828	3,653	3,007		
29.03	Bloomsburg & Sullivan	108,520	100,861	136,047	3,742	3,478	4,691		
101.67	Blytheville, Leachville & Arkansas Southern	182,918	240,033	224,187	2,999	2,353	2,198		
10.37	Bonlee & Western	12,338	18,215	28,476	1,234	1,822	2,848		
91.52	Boyne City, Gaylord & Alpena	365,590	476,715	456,031	3,964	5,182	4,957		
12.00	Bondon Ry	30,716	21,556	15,783	2,360	1,796	1,315		
10.00	Brooksville & Ohio River	16,783	14,404	18,636	1,678	1,440	1,864		
18.60	Buffalo Creek & Gawler	85,101	83,603	99,612	4,479	4,400	5,243	4,707	
78.95	Bullfrog Goldfield R. R	73,779	68,492	61,158	934	867	774		
49.52	Butler County R. R	198,613	222,951	265,567	3,972	4,459	5,311	4,581	
10.30	Cache Valley R. R	19,716	12,333	81,763	1,972	1,233	1,876		
15.07	Caddo & Choctaw	73,927	59,833	78,127	3,485	3,989	5,208	4,227	
10.48	Cady R. R	28,537	29,007	29,947	2,854	2,901	2,995		
14.61	California & Oregon Coast	11,230	14,587	25,422	749	972	1,695		
16.30	California, Shasta & Eastern	3,904	8,236	5,355	244	515	335		
43.50	Cape Girardeau Northern	54,937	63,515	64,432	1,249	1,443	1,466		
14.97	Carolina & Northeastern	24,597	27,324	39,954	1,640	1,822	2,664		
4.81	Carbon County R. R	(1)	(1)	5,209	(1)	(1)	1,042		
13.93	Carlton & Coast Ry	4,994	(1)	57,228	3,570	(1)	4,088		
5.99	Cazmonia Southern	14,107	11,877	13,902	2,351	1,980	2,317		
127.12	Central Indiana R. R	273,242	252,030	433,095	2,152	1,984	3,410		
37.06	Central New York Southern	144,097	128,490	70,821	3,894	4,473	1,914		
16.36	Central Railroad of Oregon	19,305	18,488	17,506	1,207	1,218	1,094		

No report.

[2] Six months only; no report.

[6] Four months only.

[7] One month only.

Revenue survey of American short-line railroads for a test period of three years, 1921, 1922, and 1923—Continued

CLASS B—Continued

Average miles operated	Railroad	Gross operating revenues for—			Revenue per mile of road operated			Average per mile of road, 3 years	Value
		1921	1922	1923	1921	1922	1923		
31.00	Central West Virginia & Southern	$168,346	$130,686	$93,348	$5,431	$4,216	$3,011		
65.11	Central Wisconsin	41,476	32,915	45,279	638	506	697		
40.57	Chesapeake & Western	115,289	117,146	132,829	2,812	2,857	3,240		
140.00	Chicago, Atica & Southern	(1)	(7)	249,813	(7)	(7)	1,784	$1,784	
78.82	Christie & Eastern	63,124	107,537	106,622	6,312	1,361	1,350		
22.00	Cimarron & Northwestern	33,014	23,173	20,103	1,500	1,053	914		
5.63	Cincinnatti & West Wood	12,166	(1)	13,292	2,028	(1)	2,215		
18.30	City of Prineville Ry	36,382	38,105	40,648	2,021	2,117	2,258		
60.25	Clinton, Oklahoma & Western	250,566	178,374	169,445	4,176	2,973	2,824		
6.83	Colfax Northern Ry	26,619	19,256	23,789	3,803	2,751	3,397		
24.00	Collins & Glenville	24,607	37,033	54,585	1,109	1,543	2,274		
39.00	Conders Port & Port Allegheny	156,339	148,278	135,551	4,009	3,802	3,475		
20.78	Colorado & Southeastern	81,382	93,485	88,219	3,875	4,452	4,200		
20.58	Colorado-Kansas Ry	12,062	8,817	28,988	574	420	1,133		
111.35	Colorado, Wyoming & Eastern	230,187	246,349	228,840	2,074	2,219	2,062		
27.98	Crystal & San Juan	(8)	5,186	24,005	(8)	184	857		
15.82	Danville & Mount Morris	65,490	74,808	106,314	4,093	4,051	6,645	4,930	
20.65	Death Valley R. R	23,664	73,990	112,744	1,127	3,571	5,369	3,356	
32.90	Deering Southwestern	79,551	99,215	144,753	2,411	3,007	4,385		
45.75	Delaware & Northern	170,317	206,228	204,850	3,485	4,483	4,453		
99.30	Detroit, Bay City & Western	689,411	537,262	280,966	5,472	4,840	3,848		
24.77	Dover & Southbound	55,918	42,290	40,912	2,237	1,692	1,620		
12.40	Delaware Valley R. R	29,005	23,234	26,733	2,417	1,936	2,230		
9.58	Eagles Mere R. R	(9)	6,440	9,164	(9)	644	916		
39.05	Eastern Kentucky R. R	92,529	117,222	100,688	2,372	3,006	2,582		
49.55	East Jordan & Southern	156,561	133,362	161,151	3,131	2,667	3,223		
26.62	Eastland, Wichita & Gulf	(9)	46,524	69,888	(9)	1,723	2,588		
9.60	East Texas & Gulf	12,479	14,227	12,466	1,128	1,423	1,245		
83.80	Electric Short Line Ry	192,228	181,908	225,071	3,314	3,136	2,679		
7.30	Emmittsburg R. R	29,598	28,998	23,834	4,228	4,143	3,405		
84.60	Eurica Nevada R. R	(10)	68,635	210,605	(10)	807	2,478		
10.00	Ettrick & Northern	15,349	728	16,874	1,535	721	1,687		
144.08	Escanaba & Lake Superior	493,104	432,576	418,714	3,424	3,004	2,908		
16.00	Federal Valley R. R	68,540	45,562	39,509	4,284	2,848	2,469		
8.66	Felicity & Bethel R. R	11,904	12,184	12,510	1,323	1,354	1,390		
40.79	Fellsmere R. R	5,579	4,330	5,183	507	394	562		
7.38	Ferdinand R. R	20,338	23,639	30,646	2,905	3,377	4,378		
23.03	Flint River & Northeastern	54,338	55,353	43,248	2,363	2,407	1,880		
18.82	Fordyce & Princeton	71,779	70,990	61,876	3,778	3,736	3,257		
39.02	Fort Smith, Subiaco & Eastern	58,626	67,713	71,575	1,466	1,693	1,789		

34.55	Franklin & Abbeyville	158,708	185,737	140,734	2,886	2,377	2,559		
29.95	Franklyn & Pittsylvania R. R	35,510	5,125	24,192	1,184	171	806		
23.90	Fredericksburg & Northern	62,061	58,771	64,156	2,586	2,449	2,673		
24.16	Frees Valley Ry	25,765	30,809	36,066	1,074	1,284	1,503		
37.00	Gainesville & Northwestern	71,792	89,770	117,197	1,732	2,426	3,195		
74.00	Gainesville Midland	247,550	209,338	257,283	3,345	2,830	3,478		
10.00	Galesburg & Great Eastern	15,167	19,299	14,181	1,517	1,930	1,418		
35.00	Garyville Northern	72,726	92,257	86,815	2,078	2,636	2,480		
13.94	Garden City Western	18,125	13,821	17,664	1,295	987	1,260		
406.16	Georgia & Florida	1,389,678	1,362,046	1,785,526	3,424	3,355	4,398		
192.86	Georgia, Florida & Alabama	656,218	739,515	830,997	3,400	3,832	4,306		
49.98	Georgia, Ashburn, S. & C	(1)	51,449	90,637	(1)	1,029	1,813		
67.78	Georgia Northern	332,990	326,941	318,150	4,897	4,808	4,682		
36.00	Georgia Southwestern & Gulf	142,036	171,972	176,554	3,946	4,777	4,904		
16.00	Grasse River R. R	72,953	77,713	84,268	4,560	4,857	5,267	4,895	
41.50	Graysonia, Nashville & Ashton	(1)	(7)	115,641	(1)	(7)	2,753		
40.69	Great Southern	97,909	79,573	72,453	2,388	1,941	1,767		
19.69	Green Country R. R. (Georgia)	40,161	33,480	54,889	2,008	1,674	2,744		
19.00	Greenville & Northern	(1)	30,860	38,864	(1)	1,624	2,045		
36.00	Groveton, Lufkin & Northern	90,891	107,135	117,865	2,525	2,976	3,274		
130.60	Gulf, Texas & Western	221,762	147,298	171,667	1,694	1,124	1,310		
24.00	Hampton & Grantsville	54,905	62,367	56,038	2,388	2,599	2,335		
2.60	Hanover Ry	10,621	13,860	10,813	3,540	4,620	3,604		
10.50	Hardwick & Woodberry	14,421	6,495	20,518	1,311	590	1,865		
42.12	Hartford Eastern Ry	85,449	56,301	75,031	2,035	1,317	1,786		
23.62	Hill City Ry	58,823	42,420	39,469	2,451	1,768	1,644		
40.33	Intermountain R. R	109,689	117,691	198,909	2,742	2,942	4,975		
24.00	Jackson & Eastern Ry	59,971	69,486	115,316	4,284	4,963	4,805		
39.93	Jefferson & Northwestern	78,162	81,857	86,094	1,954	2,046	2,152		
13.00	Cane & Elk R. R	29,900	39,053	21,657	2,300	3,004	1,666		
43.89	Kalamazoo, Lake Shore & Chicago	174,829	145,580	67,172	2,973	3,309	1,527		
15.00	Kansas & Oklahoma	(1)	8,810	2,674	(1)	979	178		
26.19	Kansas & Ceidell	61,593	71,407	62,532	2,369	2,746	2,405		
154.22	Kansas City, Clinton & Springfield	540,179	600,060	566,143	3,508	3,896	3,678		
5.64	Keesville, Ausable Chasm & Lake Champlain R. R	14,463	17,163	78,501	2,401	2,861	3,084		
5.00	Kennebec Central	18,117	18,135	25,678	3,623	3,627	5,136	4,129	
9.50	Kishacoquilla Valley	22,687	19,683	23,407	3,269	1,968	2,341		
8.00	Knox R. R	32,857	31,581	38,743	4,107	3,948	4,968		
30.00	Knoxville & Carolina	(1)	98,395	129,325	(1)	3,280	4,311		
16.30	Kosciusko & Southern	52,086	53,695	60,982	3,255	3,356	3,811		
42.61	La Crosse & Southeastern	150,383	164,673	132,553	3,497	3,597	4,013		
72.85	Lake Champlain & Moriah R. R	(11)	(11)	323,208	(11)	(11)	4,489		
8.00	Lake Providence, Taxarkana & Western	20,637	26,215	19,590	3,580	3,277	2,498		
16.47	Lake Tahoe Railway & Transportation Co	68,153	75,056	71,225	4,260	4,691	4,452		
14.90	Laone Northern	20,081	31,412	39,748	1,433	2,233	2,839		
13.00	Laurel Fork R. R	41,377	61,641	55,508	2,956	4,403	3,965		
30.00	Laurinburg & Southern	106,745	137,886	140,806	3,558	4,596	4,694		
11.05	Lawndale Railway & Industrial Co	18,952	18,672	18,343	1,723	1,697	1,668		
46.50	Leavenworth & Topeka	98,309	87,408	78,529	2,092	1,961	1,611		
8.50	Lenox R. R	19,345	25,818	23,247	2,149	2,869	2,583		

[1] No report.
[2] Six months only; no report.
[7] One month only.
[8] Not operating.
[9] Five months only.
[10] Nine months only.
[11] See annual reports.

Revenue survey of American short-line railroads for a test period of three years, 1921, 1922, and 1923—Continued

CLASS B—Continued

Average miles operated	Railroad	Gross operating revenues for—			Revenue per mile of road operated			Average per mile of road, 3 years	Value
		1921	1922	1923	1921	1922	1923		
34.79	Linville River R. R	$125,193	$133,003	$154,966	$3,577	$3,800	$4,428		
89.19	Live Oak, Perry & Gulf	302,778	331,208	352,232	3,402	3,834	3,969		
8.00	Loranger, Louisiana & Northeastern	8,855	9,993	10,073	1,107	1,249	1,259		
64.08	Louisiana Southern	139,352	(4)	164,210	2,177	(4)	2,566		
7.70	Louisville, New Albany & Corydon	24,245	24,185	26,762	3,031	3,023	3,345		
28.11	Magma Arizona	36,005	20,011	154,620	1,286	715	5,530	$2,506	
8.70	Mammoth Cave Ry	22,287	22,649	20,025	2,786	2,756	2,225		
20.00	Manistee & Repton	16,817	18,364	22,334	841	818	1,117		
208.01	Manistee & Northeastern	499,155	461,216	460,518	2,400	2,217	4,132		
8.15	Manchester & Oneida	26,919	26,040	25,867	3,365	3,256	3,233		
9.80	Marcellus & Otisco Lake	(1)	(1)	41,437	(1)	(1)	4,144		
37.05	Marinette, Tomahawk & Western	181,695	131,877	178,713	4,911	3,564	4,830		
43.56	Mariana & Blountstown	58,901	62,243	60,262	1,339	1,415	1,824		
17.70	Marion & Rye Valley	32,802	30,001	31,271	1,823	1,667	1,737		
9.47	Marion Ry	40,832	39,590	36,289	4,537	4,399	4,032		
15.00	Mascot & Western	9,996	8,342	9,376	666	556	625		
15.15	Maxton, Alma & Southbound	32,999	(1)	33,005	(1)	2,200	2,200		
68.62	Midland Continental	138,447	169,362	150,561	2,007	2,455	2,182		
30.60	Mineral Point & Northern	68,232	72,408	87,540	2,201	3,336	2,824		
62.67	Minneapolis & Rainy River	231,694	87,565	151,047	3,679	1,390	2,556		
51.59	Mississippi Southern	(1)	(1)	163,789	(1)	(1)	3,342		
54.22	Missouri Southern	178,118	194,387	220,320	3,298	3,600	4,080		
33.50	Minneapolis, Red Lake & Manitoba	107,199	115,085	84,601	3,153	3,385	2,488		
10.00	Milltown Air Line	10,783	15,354	22,438	1,078	1,535	2,244		
2.92	Millstead Ry	(1)	(1)	8,894	(1)	(1)	2,965		
17.20	Mississippi & Alabama	(1)	(6)	59,485	(1)	(6)	3,496		
11.75	Mississippi & Western	6,701	1,317	24,468	559	1,098	2,039		
16.10	Mississippi Eastern	50,405	48,261	79,250	3,150	3,016	4,953		
15.01	More Haner & Cleveland	(1)	56,554	38,409	(1)	3,770	2,561		
2.51	Monroe & Texas	8,516	6,307	7,743	2,854	2,102	2,581		
24.44	Morehead & North Folk	105,751	92,923	86,668	4,406	4,872	3,611		
20.13	Montana Western	40,607	45,024	52,053	2,033	2,202	2,603		
15.50	Morgan & Fentress	15,826	27,062	34,267	989	1,693	2,142		
24.03	Mount Jewett, Kinzua & Riterville	32,656	35,817	37,826	1,361	1,492	1,576		
53.77	Muscatine, Burlington & Southern	189,783	191,186	138,094	3,515	3,549	2,555		
142.94	Muscle Shoals B. & P	(1)	Circular.	458,625	(1)	Circular.	3,207		
364.57	Missouri & Northern Arkansas	(3)	739,981	1,509,848	(3)	2,027	4,137		
8.16	Manson Ry	18,774	13,990	24,088	2,334	13,990	3,011		
26.60	Nacogdoches & Southeastern	49,089	51,995	56,712	1,753	1,856	2,025		
10.40	Nashville & Atlantic	(1)	3,700	29,731	(1)	370	2,973		
29.42	Natchez, Columbia & Mobile	80,835	139,171	165,285	2,787	4,799	5,699	4,428	
6.00	Natchez, Urania & Ruston	12,290	9,145	12,446	2,058	1,524	2,077		

33.49	Neame, Carson & Southern	128,379	138,988	107,074	3,890	4,212	3,149		
156.15	Nevada-California-Oregon	431,299	338,765	385,563	2,765	2,172	2,472		
92.30	Nevada Central	39,662	43,649	47,380	431	474	515		
40.64	Nevada Copper Belt	96,805	89,993	86,925	2,361	2,193	2,120		
165.87	Nevada Northern	345,067	575,777	1,030,805	2,079	3,469	6,210	3,919	
35.00	New Holland, Higgins Point & M. V	(1)	(1)	36,991	(1)	(1)	1,057		
115.70	New Mexico Central	283,641	129,375	76,299	2,445	1,115	657		
59.70	New Orleans & Lower Coast	208,600	143,690	155,151	3,477	2,395	2,586		
28.22	New Orleans, Natalbany & Natchez	129,382	134,027	149,829	4,621	4,787	5,351	4,920	
13.80	Nezperce & Idaho	48,991	30,280	26,298	3,494	2,163	1,878		
56.13	New York & Pennsylvania	89,383	105,346	112,158	1,596	1,881	2,003		
25.70	North Louisiana & Gulf	65,461	51,542	55,596	2,518	1,982	2,138		
80.50	Northwestern Ry. of South Carolina	182,044	184,328	254,898	2,247	2,276	3,134		
18.95	Oakdale & Gulf	32,534	49,919	47,275	1,627	2,496	2,368		
26.00	Oak Grove & Georgetown	2,621	60,096	126,323	101	2,315	4,859		
32.82	Ocala Southwestern	77,696	81,252	48,292	1,126	1,178	1,238		
39.80	Ohio & Kentucky	110,794	111,200	144,243	2,770	2,780	3,606		
4.40	Oil Fields Short Lines	17,470	5,716	7,102	4,368	1,429	1,776		
20.08	Oklahoma and Arkansas	(1)	30,645	50,514	(1)	1,433	2,526		
15.00	Ontonagon R. R	22,132	22,563	22,563	1,475	1,504	1,504		
23.63	Oregon, Pacific & Eastern	60,568	76,015	93,546	2,524	3,167	3,898		
34.25	Ouachita & Northwestern	87,980	72,711	89,529	2,588	2,139	2,633		
89.90	Pacific & Idaho Northern	222,630	210,001	188,525	2,474	2,335	2,095		
104.14	Pacific Coast Railway	226,302	248,568	162,541	2,176	2,390	1,563		
40.03	Pajaro Valley Consolidated	110,446	57,569	58,974	2,762	1,439	1,478		
51.53	Paris & Mount Pleasant	167,860	179,820	208,543	3,291	3,526	4,089		
40.40	Pecos Valley Southern	61,467	49,815	67,965	1,537	1,245	1,699		
7.99	Pine Bluff & Northern	21,217	12,401	9,053	2,653	1,439	1,132		
210.56	Pittsburg, Shawmut & Northern	1,195,757	1,271,750	1,386,206	5,668	6,027	2,778	4,824	
29.61	Port Bolivar Iron Ore	105,419	80,241	102,340	4,055	3,086	3,939		
26.40	Port Townsend & Puget Sound	24,249	14,658	18,683	808	489	623		
31.86	Potato Creek R. R	131,523	147,845	29,268	4,110	4,620	5,854	4,861	
133.00	Prescott & Northwestern	148,671	143,293	139,373	1,118	1,077	1,048		
15.00	Quakertown & Bethlehem	5,387	5,374	4,587	359	358	306		
5.29	Quincy R. R	21,526	20,842	27,123	4,305	4,168	5,425	4,633	
18.29	Pittsburgh & Susquehanna	61,387	67,521	82,624	3,522	3,751	4,590		
11.44	Prattsburgh Ry	32,491	29,527	31,097	2,954	2,684	2,827		
9.30	Pickens Ry	31,891	23,759	31,072	3,544	2,640	3,452		
37.60	Potomac, Fredericksburg & Piedmont	67,846	45,020	63,750	1,785	1,185	1,414		
22.50	Randolph & Cumberland	40,059	51,507	55,668	1,742	2,239	2,420		
33.50	Rapid City, Black Hills & Western	117,859	144,956	178,017	3,466	4,263	5,236	4,322	
51.43	Ray & Gila Valley	15,866	14,121	41,295	2,267	2,017	5,899	3,394	
75.29	Red River & Gulf	297,458	297,669	404,106	3,966	3,968	5,388	4,444	
16.59	Reynoldsville & Fall Creek	48,806	50,118	103,312	3,871	2,948	6,077	3,965	
26.89	Rio Grande & Eagle Pass	104,783	95,903	83,805	3,882	3,552	3,104		
15.00	Roanoke Ry	41,258	59,485	33,008	2,751	3,966	2,200		
4.54	Roby & Northern	15,564	12,562	18,897	3,113	2,512	3,779		
22.02	Rockingham R. R	65,376	65,458	75,530	2,973	2,975	3,433		
85.33	Rock Island Southern	256,175	193,381	303,195	4,658	2,275	3,567		
5.65	Rockport, Langdon & Northern	20,281	21,710	25,605	3,380	3,618	4,268		

[1] No report. [3] Seven months only. [4] Leased. [6] Four months only.

Revenue survey of American short-line railroads for a test period of three years, 1921, 1922, and 1923—Continued

CLASS B—Continued

Average miles operated	Railroad	Gross operating revenues for—			Revenue per mile of road operated			Average per mile of road, 3 years	Value
		1921	1922	1923	1921	1922	1923		
6.17	Rawlesburg & Southern	$22,896	$27,661	$27,328	$3,816	$4,610	$4,555		
8.56	St. John & Ophir R. R	6,272	23,719	24,589	708	2,635	2,732		
103.40	St. Louis Hannibal	339,190	355,719	368,923	3,293	3,454	3,572		
20.00	St. Louis, Kennett & Southeastern	(1)	65,978	63,244	(1)	3,299	3,162		
13.76	Sabine & Nechez Valley	(1)	28,923	47,317	(1)	3,066	3,380		
14.46	Sacramento Valley	54,625	44,857	9,482	3,902	3,204	677		
21.50	Salem, Winona & Southern	33,585	39,789	39,161	1,527	1,809	1,780		
80.70	Salina Northern	176,390	146,265	150,329	178	1,807	1,856		
54.60	San Antonio Southern	271,749	225,158	260,716	4,941	4,094	4,740		
15.21	San Luis Central R. R	62,138	55,261	57,200	4,143	3,684	3,813		
31.53	San Luis Southern	30,505	29,691	23,040	953	928	720		
22.57	Santa Maria Valley	81,163	72,534	73,094	3,529	3,154	3,178		
12.12	Sardis & Delta Ry	38,686	61,380	64,001	2,976	4,722	4,923		
32.69	Savannah & Statesboro Ry	71,618	62,331	66,813	2,170	1,889	2,025		
40.08	Schofield & Tonesta	84,437	81,642	63,748	2,111	2,041	1,594		
38.00	Shearwood Ry	43,774	51,317	66,920	1,152	1,350	1,761		
8.50	Shelby County R. R	33,771	29,046	25,367	3,752	3,227	2,819		
21.50	Shelby Northwestern Ry	36,841	39,178	42,604	1,675	1,781	1,937		
10.75	Shreveport, Houston & Gulf	54,620	47,231	36,403	4,965	4,294	3,309		
27.87	Sibley, Lake Bisteneau & Southern	88,526	65,359	95,393	5,207	3,845	3,407		
17.40	Silverton & Northern	11,395	89,850	55,504	1,140	899	3,265		
33.30	Sligo & Eastern	148,860	57,658	83,862	4,511	1,747	2,541		
9.60	Smoky Mountain Ry	40,760	43,002	47,473	4,076	4,300	4,747		
81.60	South Georgia Ry	273,520	290,096	303,668	3,336	3,611	3,703		
24.70	Stanley, Merrill & Phillips	66,255	48,336	15,619	1,578	11,510	625		
18.50	Stockton, Terminal & Eastern	13,124	22,361	17,716	691	1,177	932		
4.53	Stone Harbor R. R	(2)	20,739	19,924	(2)	4,148	3,985		
4.50	Strasburg R. R	5,350	(1)	5,753	1,070	(1)	1,151		
42.02	Superior & Southeastern	43,446	26,209	28,201	1,034	624	671		
22.66	Sumter & Choctaw	94,869	71,192	79,135	4,125	3,093	3,441		
33.91	Susquehanna River & Western	11,009	68,181	81,470	2,089	2,005	2,396		
10.75	Tabor & Northwestern	38,690	34,717	35,825	3,517	3,156	3,257		
6.63	Talbotton Ry	15,701	16,335	22,157	3,172	2,334	3,165		
56.00	Tampa & Jacksonville	82,729	131,947	131,109	1,477	2,356	2,341		
37.34	Tauras & Gulf	66,788	76,960	97,638	1,865	2,080	2,639		
94.59	Tennessee, Alabama & Georgia	134,986	124,389	245,310	1,421	1,309	2,582		
37.11	Tennessee & North Carolina	142,248	173,682	179,747	3,845	4,694	4,858		
19.00	Tennessee, Kentucky & Northern	72,238	76,845	88,489	3,802	4,044	4,657		
20.91	Texas Southeastern	215,156	176,324	92,498	3,416	3,918	4,405		

24.68	Thornton & Alexandria	103,075	87,318	101,003	4,123	3,493	4,040		
12.00	Tomasville Ry	6,973	14,582	19,390	581	1,215	1,616		
112.56	Tonopah & Goldfield	378,942	420,997	412,746	3,353	3,726	3,653		
169.07	Tonopah & Tidewater	247,412	441,719	537,330	1,464	2,614	3,197		
30.80	Transylvania Ry	64,482	94,335	146,079	2,080	3,043	4,712		
5.92	Trinity Valley Southern	20,085	28,316	20,934	3,348	4,719	3,489		
18.00	Trinity Valley Northern	40,658	61,126	61,437	2,259	3,396	3,413		
27.00	Tuscarora Valley	48,059	44,159	54,140	1,812	1,636	2,005		
44.34	Tucson, Cornelia & Gila Bend	119,864	171,527	320,084	2,724	3,898	7,275	4,632	
12.26	Tuskegee & Southeastern	(1)	21,265	93,285	(1)	1,772	7,774	4,773	
68.46	Uintah Ry	181,190	381,769	431,373	2,665	5,614	6,344	4,874	
9.20	United Ry	(1)	3,361	3,249	(1)	373	361	367	
5.00	Ursina & North Fork	15,870	14,754	15,393	3,174	2,951	3,079		
37.10	Unadilla Valley Ry	18,400	29,181	36,409	497	789	984		
10.41	Valley R. R. (of Pennsylvania)	13,771	15,129	16,678	1,377	1,513	1,668		
39.10	Valley & Siletz	172,073	168,303	191,600	4,412	4,315	4,913		
20.92	Ventura Co. Ry	40,471	25,466	20,064	1,927	1,117	955		
19.28	Virginia Blue Ridge	38,324	43,833	45,611	2,017	2,307	2,281		
7.85	Virginia Southern	16,248	13,045	21,289	2,031	1,631	2,661		
36.29	Warren & Salina River	77,629	61,913	78,950	2,156	1,720	2,193		
20.10	Washington & Lincolnton	40,299	67,031	110,516	2,011	3,354	5,526	3,630	
11.62	Washington Western	29,263	36,599	24,512	2,439	3,050	2,043		
5.09	Waterville Ry	14,943	12,180	10,518	2,989	2,436	2,104		
20.00	Waycross & Southern	94,962	101,888	95,394	4,748	5,094	4,769		
20.50	Waycross & Western	18,992	20,237	21,750	904	964	1,036		
5.40	Willamette Valley & Coast	7,428	5,204	5,230	1,480	1,041	1,046		
22.00	Willington & Powellsville	73,117	76,349	69,452	3,324	3,470	3,157		
32.53	Westfield Ry	45,529	44,063	40,947	1,440	1,335	1,241		
45.81	West Virginia Midland	49,614	53,716	75,202	1,079	1,168	1,635		
19.34	White River R. R. (Vermont)	69,941	80,403	77,584	3,681	4,232	4,083		
27.50	White Sulphur & Huntersville	18,252	17,643	14,778	652	809	531		
100.20	Wichita & Northwestern	174,443	123,795	130,823	1,746	1,238	1,308		
30.20	Wilmington, Brunswick & Southern	64,023	70,800	78,741	2,134	2,360	2,625		
44.50	Wiscassett, Waterville & Farmington	124,450	93,142	81,262	2,823	2,115	1,847		
70.10	Wisconsin & Michigan	268,917	337,695	356,198	3,841	4,824	5,089	4,585	
46.00	Williamsport & North Branch	152,444	133,336	152,806	3,318	2,899	3,323		
13.88	Woodstock Ry	73,382	66,921	62,117	5,242	4,780	4,437	4,820	
17.64	Wyoming & Missouri River	15,564	14,658	17,481	865	814	971		
28.60	Wyoming Ry	66,778	73,619	91,660	2,303	3,539	3,161		
7.37	Ureka R. R	21,580	21,913	22,334	3,083	3,130	3,191		
21.00	Washington, Brandywine & Point Lookout	54,888	35,505	46,514	2,614	1,691	2,215		

[1] No report.

[2] Six months only; no report.

Mr. CAIN. It is probably true that some of the weakest roads in this list of class C roads could well be eliminated from the transportation system of the country, but I assert with confidence that the great majority of these roads can not be abandoned without such damage to the public interest as that it should not and will not be permitted. In addition to the conclusions of the Senate committee to which I have pointed, which conclusions seem irresistible when considered in connection with the study of roads I am submitting for your consideration, I call your attention to the further fact that the Interstate Commerce Commission, which has been considering the railroad problem in the light of the transportation act of 1920 for the past six years, and I may say has done so with marked intelligence and fidelity to the public interest, announced its views in regard to the short lines as involved in the weak road problem in the following language in the Nickel Plate decision:

> The American Short Line Railroad Association and certain individual carriers intervened for the purpose of securing proper recognition of the interests of short lines connecting with the lines of the lessor companies should the proposed acquisitions be approved. In view of our denials of the applications it will be unnecessary to deal with those intervenors but the importance of the problem of the short lines in their relation to this subject can not be too strongly emphasized.
>
> One of the chief criticisms of unifications which have been proposed or suggested has been that certain of them do not embrace related weak lines, although the union of the weak with the strong lines is one of the ends which Congress apparently most definitely had in mind. When these unifications are being considered the problem of the short lines whose property in the public interest should be included in the systems proposed can not be overlooked if it is possible to include them upon reasonable terms.
>
> In this instance little or no consideration was given to the short line connections of the lessor companies in the preparation of the plan, but on the contrary, as has been pointed out, it was proposed to leave out some of the weaker units of the Erie. It is apparent that such a policy nullifies one of the intentions of Congress in enacting this legislation. Every applicant should assume the burden of making reasonable provision in its plan for the possible incorporation of every connecting short line now in operation in the territory covered or to be covered by the proposed grouping or unification. No branch line or short line now in operation within the territory in question should be left out of the consideration unless by affirmative testimony the abandonment of operation of such line or its omission from the plan has been justified.

It thus appears that the problem which confronted Congress when the transportation act was being constructed is the same problem that confronts you gentlemen to-day, namely, that of the weak railroad. This brings me to a discussion of the inquiry as to—

WHY CARRIERS ARE WEAK

In the first place, as has been repeatedly asserted, some of these shorter roads were not constructed as common carriers. They were originally constructed as the servant of an industry. After they were thus constructed and put in operation lands were opened up to cultivation and community centers were established, which have, in some instances, grown to such proportions as that the carrier originally built to serve an industry has become more important to the public than to the industry itself. Some of these carriers have not developed sufficient traffic with decline of the industry they serve to make them self-sustaining, and still they serve such a substantial present and prospective public need as that they ought not to be abandoned.

There are in the list of short lines to which I have alluded more than 200 roads that do a competitive business, or, in other words, roads that connect with two or more larger roads and compete with such roads, and there are about 300 roads that connect with only one larger road and are commonly spoken of as noncompetitive or feeder lines, but even these roads are necessarily competitive in the sense that the commerce and industry local to every railroad must compete with the commerce and industry of others, hence a short-line railroad with only one connection can hardly hope to attract industries and institutions to be established upon its line where such industries and institutions can procure better service or better rates elsewhere.

Fundamentally, every road that is weak is in that condition because of the lack of earning power. This lack of earning power is attributable in some instances to the lack of traffic and in other instances to operating handicaps such as excessive grades, curvature, poor track, light equipment—all impossible to remedy without credit—while still other roads are weak because they are unable to meet the competition of strong roads or are unable to procure from strong lines fair divisions of the revenues received from traffic jointly handled. The divisions in many, probably most, cases are based upon a mileage prorate. That means a prorate of the revenues derived from the joint haul proportioned to the respective mileage of each of the participating carriers. That was never fair and is more inequitable and unfair to-day, as I shall explain later on.

In recent years the short lines or roads that can only engage in a limited haul have suffered tremendously from the growth of automobile competition. It is a matter of common knowledge that the automobile is most frequently used in short hauls from which it logically follows that the short haul carrier is the greatest sufferer from this character of competition.

In order that you may visualize the extent to which the short and weak lines are affected by automobile transportation, it will be helpful to see just what that arm of our transportation now amounts to. In the published report of a survey of data accumulated by the Bureau of Industrial Technology through the National Automobile Chamber of Commerce, associations of motor accessories manufacturers, associations of tire producers, insurance companies, labor organizations, and gasoline and oil distributers, it is disclosed that the automotive industry is now the largest business in the United States—indeed, the largest business in the world. Assuming this report to be correct or even approximately so, the Nation's initial investment in automobiles alone is greater than the total value of our farm crops and is more than twice as great as our total annual investment in the construction of new buildings. It is estimated that there are in the neighborhood of 20,000,000 automobiles now owned and operated in continental United States. I pause to say that is no longer an estimate, but a fact. The average retail value with accessories is estimated at $1,000 per car, hence the initial cost of automobiles in this country aggregates as much as $20,000,000,000. This stupendous sum is augmented by annual expenditures set forth in the report that are

startling. As demonstrating where the automobile dollar goes annually the bureau made public a table representing the annual national expenditure on investment and upkeep which is as follows:

Cost of new cars and accessories	$3, 750, 000, 000
Insurance	300, 000, 000
Upkeep, repairs	2, 000, 000, 000
Depreciation	2, 500, 000, 000
Tires	618, 000, 000
Garaging	900, 000, 000
Interest on investment	500, 000, 000
Gasoline	1, 200, 000, 000
Drivers' wages	1, 600, 000, 000
Oil	300, 000, 000
Taxes	625, 000, 000
Total	14, 293, 000, 000

You will observe that these figures do not include or take into account the cost of public highways constructed by State and National Governments, nor the amount annually expended in the upkeep of such highways. The Interstate Commerce Commission, in arriving at the aggregate value of all the railroads of the United States in 1920, established the value at between nineteen and twenty billions of dollars. This valuation included not only the roadbed and equipment but all of the shops, depots, offices and facilities of every character used in railroad transportation.

I mention these facts not only to give you a complete visualization of the transportation business and its importance to the social, industrial, and commercial life of our country, but also that you may see how difficult and delicate the task of adjusting these different methods of transporation and their instrumentalities to each other so that the people as a whole may have adqeuate transportation service through the preservation of every agency available and at the lowest rates consistent with efficient service.

Automobile transportation is a legitimate and indispensable arm of our transportation service. It must and will be protected and fostered as a matter of course. Nevertheless its effect upon railroad transportation should not and can not be ignored.

Right there I pause to state to you that the most obscure community in our Nation served by a steam railroad can hardly afford to dispense with the service of that railroad, notwithstanding it has the highway and automobile transportation. The automobile bus and the automobile car, I think, make a very effective substitute for railroad transportation. But I know of no substitute that can be used for steam-railroad transportation for carload movement.

You gentlemen well understand that if a community is deprived of a steam railroad and it has to ship a carload of stuff to the nearest railway station, and then break, bulk, and load that stuff on an automobile truck and haul it over to the little community that has had to give up its steam railroad, that community is put not only at the disadvantage of not getting quick service and adequate service, but it is put to the additional cost of adding to the railroad charge, the charge for breaking bulk and hauling it by the automobile to the consignee.

The question naturally arises as to whether or not communities now served by short-line railroads may not be adequately served through the automobile bus and the automobile truck operating as

common carriers. I think it may be admitted that the transportation of passengers and express now carried on by short-line railroads might be substituted in many instances by the use of the automobile, bus, and truck. However, the passenger business is not nearly so important to any community as the expeditious movement of freight. I do not think any community now served by a railroad line, which is functioning as a unit, no matter how small, in the general transportation system, can afford to lose such transportation. The farmer whose crop is ready to move, or the fruit grower or the stockman whose product is ready for the market, or the merchant or the miller or the manufacturers, whose business is dependent upon the most obscure and inefficient steam railroad would be not only at a serious disadvantage in competing with other localities, but would be subjected to an additional cost which in most cases would be ruinous if deprived of the facilities of carload movement to or from the markets of the country.

To be sure, an automobile truck can be used to move any character of freight to and from a railroad station, but in addition to the loss of time occasioned by having to break bulk and move to and from the railroad by truck there is always the cost of the truck movement which must be added to the railroad rate, and it is common knowledge that a mill or a factory or an industry of any character will not locate and can not successfully be operated off of a line of railroad.

I have already stated that most of these short-line railroads can not be abandoned, viewed from the standpoint of public interest. I have shown that this is the conclusion of the Senate Committee in its report already quoted and I have also shown you that the importance of maintaining these short lines is recognized by the commission in its report in the Nickel Plate case. In addition to these statements, which are most convincing, I point to the further fact that for the past six years the transportation act has been administered by the commission, which act gives the commission power to authorize the abandonment of every road which does not serve such a substantial public need as that it ought to be continued in the public interest, and to prohibit the construction of additional railroads which, viewed from the standpoint of public convenience and necessity, ought not to be built, yet the several hundred short-line railroads I have mention ed are still doing business.

The annual reports of the commission for the years 1924 and 1925 s' ow that in 1924 30 roads were authorized to be abandoned, a total of 453 miles; in 1925, 46 roads were authorized to be abandoned, a total of 651 miles.

I think these figures tend to show that roads which have survived the period following the war and are still functioning as a part of the transportation system, have pretty well proven their usefulness to the public and that most of them can not be abandoned under the provisions of the law.

This brings me to the question which above all other questions presents itself for your consideration. If these short line railroads can not be abandoned but must be continued in the public interest, how then is this to be accomplished?

HOW ARE ALL THE SHORT AND WEAK ROADS TO BE SAVED

That question constantly forces itself to the front and like Banquo's ghost, "will not down."

The transportation act was constructed with the hope of solving this great question. Four corner posts which support the whole structure are involved in those provisions of the transportation act which give power to the commission:

(1) To establish through routes and joint rates. (Sec.15 (3).)

(2) To prescribe rates so that carriers as a whole or as a whole in each of such rate groups or territories as the commission may from time to time designate, will earn an aggregate annual net railway operating income, equal as nearly as may be to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation. (Sec. 15–a.)

(3) To make an equitable distribution of the revenues derived from the rate level through divisions of joint rates so that each carrier will receive a fair return. (Sec. 15 (6).)

(4) To issue certificates to abandon a railroad or to build an additional railroad where the present or future public convenience and necessity permit of such abandonment or new construction. (Sec. 1 (18).)

The capstone to the structure is consolidation so that adequate transportation service may be procured for the country as a whole.

Now, I want to present for your consideration, if I may trespass upon your patience a little, and read from some of the reports of the court and the decisions, in order that you gentlemen may see just what the law is in its application to these carriers to-day, and so that I may point out, as I believe I can later on, what I think you must do if you are to preserve this class of carriers as units in the transportation machine.

While no one in this hearing has expressed a doubt as to the purpose Congress had in passing the transportation act, I think it will be both interesting and helpful to refer briefly to views expressed by both the commission and the Supreme Court as to the meaning and purpose of that act.

The first case presented to the commission for increased divisions under the new law, which finally was appealed to the Supreme Court, was the Bangor & Aroostook Railroad Co. et al. *v.* Aberdeen & Rockfish Railroad Co. et al., as docketed by the commission, or Akron, Canton & Youngstown Railway Co. et al. *v.* The United States of America et al., as docketed by the Supreme Court, commonly referred to as the New England Divisions case.

The commission said:

> Paragraph 6, section 15, of the Interstate commerce act was a part of the transportation act, 1920. Both the legislative history and the provisions of that act make it clear that the purpose of Congress in this legislation was broader than the mere regulation of individual railroads. Congress was endeavoring to assure an effective transportation system for the Nation. The principle was recognized that the various carriers, while independently owned, are nevertheless to a large extent interdependent, and that they owe a duty to one another in the public interest.
>
> The Supreme Court, on the same subject, said:
>
> Transportation act, 1920, introduced into the Federal legislation a new railroad policy (Railroad Commission of Wisconsin *v.* Chicago, Burlington & Quincy Railroad Co., 257 U. S. 563, 585). Theretofore, the effort of Congress had been directed mainly to the prevention of abuses, particularly those arising from excessive or discriminatory rates. The 1920 act sought to insure, also, adequate transportation service. That such was its purpose, Congress did not leave to inference. The new purpose was expressed in unequivocal language.
>
> * * * * * * *
>
> To preserve for the Nation substantially the whole transportation system was deemed important. * * *
>
> Moreover, it was not clear that the people would tolerate greatly increased rates (although no higher than necessary to produce the required revenues of weak lines) if thereby prosperous competitors earned an unreasonably large return upon the value of their properties. The existence of the varying needs of the several lines and of their widely varying earning power was fully realized. It was necessary to avoid unduly burdensome rate increases and yet secure revenues adequate to satisfy the needs of the weak carriers. To accomplish this two new devices were adopted—the group system of rate making, and the division of joint rates in the public interest.
>
> Through the former, weak roads were to be helped by recapture from prosperous competitors of surplus revenues. Through the latter, the weak were to be helped by preventing needed revenue from passing to prosperous connections. Thus, by marshalling the revenues, partly through capital account, it was planned to distribute augmented earnings, largely in proportion to the carrier's needs. This, it was hoped, would enable the whole transportation system to be maintained, without raising unduly any rate on any line. The provision concerning divisions was, therefore, an integral part of the machinery for distributing the funds expected to be raised by the new rate-fixing sections. It was, indeed, indispensable.
>
> Raising joint rates for the benefit of the weak carriers might be the only feasible method of obtaining currently the needed revenue.s Local rates might already be so high that a further increase would kill the local traffic. The through joint rates might be so low that they could be raised without proving burdensome. On the other hand the revenues of connecting carriers might be ample; so that any increase of their earnings from joint rates would be unjustifiable. Where the through traffic would, under those circumstances, bear an increase of the joint rates, it might be proper to raise them, and give to the weak line the whole of the resulting increase in revenue.

Later on, in the case of Dayton-Goose Creek Railway Co. *v.* The United States, the Supreme Court said:

> The new act seeks affirmatively to build up a system of railways prepared to handle promptly all the interstate traffic of the country. It aims to give the owners of the railways an opportunity to earn enough to maintain their properties and equipment in such a state of efficiency that they can carry well this burden. To achieve this great purpose, it puts the railroad systems of the country more completely than ever under the fostering guardianship and control of the commission, which is to supervise their issue of securities, their car supply and distribution, their joint use of terminals, their construction of new lines, their abandonment of old lines, and by a proper division of joint rates and by fixing adequate rates for interstate commerce, and in case of discrimination for intrastate commerce, to secure a fair return upon the property of the carriers engaged. * * *
>
> To regulate in the sense intended is to foster, protect, and control the commerce with appropriate regard to the welfare of those who are immediately concerned, as well as the public at large, and to promote its growth and insure its safety.

I have read those statements of the court and the commission to you, gentlemen, for the purpose of presenting sharply to your attention the fact that under the theory of the transportation act the railroads of this country are and should be considered as a whole; in other words, as a transportation plant and each carrier ought to be preserved in the public interest a unit in that transportation plant; and you can not, without weakening that plant, take out a unit any more than you could, without weakening this building, take out a block or a brick that does its part in sustaining the entire structure.

I submit to you that if the 22,000 miles of short-line railroads, plus as much as 30,000 miles of permanently weak lines, such as the Minneapolis & St. Louis, the Kansas City, Mexico & Orient, the Missouri & North Arkansas, and others are not to be preserved fostered and made more efficient through consolidation, then the whole plan and purpose of the transportation act is a ghastly failure—nay, more, it is worse than a failure because it makes possible a worse situation than we would have if the law had never been passed. For example, first, it permits the strong line to procure control of other strong lines without any obligation to take the weak, or consider how such mergers will affect the weak. That is being done to-day under paragraph 2 of section 5, and will continue to be done if you do not change this law. On that point I can not present the seriousness of the situation in a more forceful way than to read to you from an editorial of the Dallas Morning News, a Texas paper, which is considered by those who know it as the peer of any of our great papers. The editorial is in its issue of July 15, 1925; I will not read the whole editorial, but amongst other things, referring to consolidation of roads that occurred in Texas, such as the Missouri Pacific's acquirement of the International-Great Northern and of the Gulf Coast Lines and others, it says:

As an obvious consequence, the Interstate Commerce Commission, in assenting to these consolidations, has been forfeiting the most powerful influence it had for inducing them to take over the less desirable lines, those which independently are capable of earning little just now and that smaller number which just now are capable of earning nothing. Allowed to skim the cream, these great systems will, of course, be much more disinclined to take the underlying milk than they would be if they were confronted by the alternative of taking both or neither.

And further it says:

In a dispatch printed Sunday, the News's Washington correspondent quotes Senator Watson as saying he sees "a possible danger in the present merging policy, due to the situation of the weak roads." Senator Watson is said to feel that if the policy is carried far, the chief purpose of the consolidation policy would be defeated.

That is undoubtedly true, and so patently so as to move one to wonder that this policy was ever adopted. The chief purpose of the consolidation scheme and the one which must be accomplished if the public is to derive the major benefit potential in that scheme, is to attach the weak lines of small and doubtful earning power, when operated independently, to the strong lines which can, without material hurt to themselves, support the weak lines. Only when that is done can their continued operation as efficient carriers be assured, and only when that is done can rates be stabilized at levels which will sustain the weak lines without excessively enriching the strong ones. It does not exaggerate to say that our transportation problem will remain unsolved until that major purpose of the consolidation scheme shall have been accomplished.

Which makes it the more remarkable that the present policy of allowing the railroads to absorb only such lines as they covet, provided merely that they are lines which the scheme of consolidation allocates to them. Still more remarkable than the adoption of that policy is the practice of it long after the danger pointed out by Senator Watson somewhat belatedly has become visible to everyone. It would have been difficult at best to induce the great railroads chosen to be the nuclei of the several groups of the consolidation scheme to incumber themselves with the ownership of those of small and doubtful earning ability, and that difficulty is greatly increased by allowing them to take their pick of the lines allocated to them. The consolidations which have been sanctioned are not, per se, undesirable from the standpoint of the public interest. On the contrary, the News thinks, most if not all of them are desirable. But a heavy price will be paid for the resulting benefits if these consolidations would have the effect of permanently making orphans of the small and weak lines.

In the second place, the transportation act makes it impossible for the short or weak line to extend without a certificate of public convenience and necessity and otherwise so hedges about new construction, through the regulation of the issuance of securities and the operation of its properties, as that no short or weak road can extend and thereby put iself in position to compete for long haul business.

Lastly, it strikes down the restraining hand of the antitrust law and makes it possible for strong lines to combine so that they may strangle and starve the weak through those various ways in which the strong and powerful always have and always will use power in dealing with a weak competitor or a weak dependent. The creed of the strong is, naturally, that "might is right." Its religion is not that of the blessedness of giving but the satisfaction of receiving. Its preachment is not bear ye one another's burdens, not what is mine is thine, but what is thine is mine if I am strong enough to take it. The wager of battle in the settlement of differences only became obsolete as and when the human race having organized itself in the form of government laid its beneficent but firm hand upon the shoulders of the strong and said thus far shalt thou go and no farther. So far as I know the big fish have been eating the little ones from the beginning until to-day and it is quite improbable that to-morrow will reveal any change in this natural propensity of all animate life.

While I have tried to point out the need for change in the law in regard to consolidation, I feel impelled to say that I think it would be a calamity for Congress to discard the idea of consolidation because of the use, if not the abuse of the present law. I regard the transportation act as of highest value and we should not surrender its principles and go back to the old law. I insist that the short and weak roads can be saved through amendments of the law which, in my opinion, are not only within the Constitution but are just and equitable as between all interested parties—I mean the strong lines, the weak lines, and the public.

Now, how can this be accomplished? I think it may be efficiently done through a grouping of the carriers and an amendment of the provisions of 15–A, with regard to recapture. There seems to be a rather general misunderstanding as to the provisions of 15–A in regard to (a) the rate structure and (b) the recapture provisions. The first is not a guaranty as many contend but is merely statutory recognition or statutory mandate requiring the commission to use the principles of group rate making strictly in accord with the constitutional right of each carrier to earn a fair return on the value of its property devoted to public use. The second is intended to give the commission power to aid the weak carriers through specified use of a part of the excess earnings required to be paid into the commission by carriers which take in or collect more than a fair return upon the value of their respective properties after allowing for operating expenses, taxes, etc.

I do not feel it necessary to consume time discussing paragraph 2 of 15–A. I content myself with merely reading it as I believe it should be called to your attention in order that you may have its exact terms before you. It reads as follows:

In the exercise of its power to prescribe just and reasonable rates the commission shall initiate, modify, establish, or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the commission

may from time to time designate) will, under honest, efficient and economical management and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation.

Paragraph 5 of 15–A reads as follows:

Inasmuch as it is impossible (without regulation and control in the interest of the commerce of the United States considered as a whole)—

I pause to say that throughout all these decisions and through a comprehensive survey of the transportation act, one can not escape the conclusion that Congress intended that the carriers individually and collectively should be the transportation machine of the country, and that the commerce of the country as a whole should be considered fairly distributable to those carriers, as are the earnings from the transportation machine as a whole.

Inasmuch as it is impossible (without regulation and control in the interest of the commerce of the United States considered as a whole) to establish uniform rates upon competitive traffic which will adequately sustain all the carriers which are engaged in such traffic and which are indispensable to the communities to which they render the service of transportation, without enabling some of such carriers to receive a net railway operating income substantially and unreasonably in excess of a fair return upon the value of their railway property held for and used in the service of transportation, it is hereby declared that any carrier which receives such an income so in excess of a fair return, shall hold such part of the excess, as hereinafter prescribed, as trustee for, and shall pay it to, the United States.

I address myself only to this second proposition. It is frequently asserted and has been impliedly, if not directly, asserted in this hearing that excess revenues represent money earned by the strong carriers and when recaptured is taken from them merely through the exercise of arbitrary power and as an expediency of Government. Again, it has been asserted that the excess belongs to the people. I do not agree with either of these propositions. I assert with confidence that under the law in its regulation of the railroads the excess is earned by and belongs rightfully to those carriers which produce transportation at a cost greater than they receive for it and which through lack of fair and equitable divisions of the joint rates or for some other reason are not permitted to collect their proportionate part of the revenue, as a whole, derived from the rate level, under the theory and practice of group rate making, as provided in 15–a, which prescribes a rule for divisions of joint rates, under this theory of the transportation act.

Let me illustrate that. Under the theory of the transportation act revenues derived from the rate level are derived from the transportation machine. If there were two units in the machine, one strong and one weak railroad, and the value of those two railroads had been fixed by the commission, and the cost of operating those two railroads plus the taxes had been fixed by the commission, and rates established which yielded, instead of 5¾ per cent upon the aggregate value, as much as 20 per cent, and it appeared that one of those carriers got 18 per cent upon the value of its property included in that aggregate, and the other road got only 2 per cent of the value of its property included in that aggregate, there is at once an unreasonable and an unjust rate and an unreasonable and unjust division of rates. What the commission and the courts would do

would be first to reduce the rate so that the value of the two carriers would not bring as much as 20 per cent upon the aggregate, and then reduce the 20 per cent earned by the strong carrier to 5¾ per cent and raise the earnings of the weak carrier from 2 per cent to 5¾ per cent. Why? Because the transportation produced by those two carriers was in that proportion. If you go out here and ride on a bus or ride on any other vehicle that takes you from this point to some other point, you will find that in proportion to the density of traffic the cost per mile of carrying you is increased. In thin territory the bus will charge you 10 cents a mile. Why? Because the density of the traffic is such that it has to have 10 cents a mile to cover cost of the transportation it produces. If the traffic is dense the bus will charge you 5 cents a mile.

Let me illustrate it. There is a bus operating in this city that charges 25 cents for carrying a passenger 1 mile or 3 miles. That bus will take you out on Connecticut Avenue and carry you down to the station and charge you 25 cents, no more, 1 mile. It was put on as an experiment, but it has not yet found that it can produce transportation at less than that rate. It discharges you down here at this station where it has charged you 25 cents for a 1-mile haul, and you get into another vehicle of transportation just as luxurious and just as comfortable as that was, and it hauls you 1 mile for 3 cents, and the vehicle that it carries you in costs $50,000, and the track on which it is operated costs $100,000, and the engine that pulls it costs $75,000. The bus costs twenty-five or thirty. Why the difference? It is the cost of the transportation which is produced and which, according to the theory of the transportation act, each carrier is entitled to receive or it ceases to function; it no longer can exist and continue to serve the public. The public must pay for what it demands.

The railroads as a whole are and must be considered as one transportation plant or system, divisible into groups or units for the purpose of more conveniently or effectively administering the law if the commission sees fit to so group them. Every railroad is a unit in the plant. In fixing the percentage of fair return the commission must take the value of each and all the carriers as a basis, and after ascertaining the cost of operation, taxes, etc., or, in other words, finding the aggregate cost of producing all the transportation with taxes added, must then fix the rates sufficiently high to yield a fair return on the aggregate value. That is precisely what the commission did in Ex parte 74. The Supreme Court has explained the plan and principle of the transportation act in a most clear and concise way in the Dayton-Goose Creek case, which I will read you, as follows:

Having regard to the property rights of the carriers and the interest of the shipping public, the validity of the plan depends on two propositions.

First. Rates which, as a body, enable all the railroads necessary to do the business of a rate territory or section, to enjoy not more than a fair net operating income on the aggregate value of their properties therein economically and efficiently operated, are reasonable from the standpoint of the individual shipper in that section. He, with every other shipper similarly situated in the same section, is vitally interested in having a system which can do all the business offered. * * * He may, therefore, properly be required in the rates he pays to share with all other shippers of the same section the burden of maintaining an adequate railway capacity to do their business.

Second. The carrier owning and operating a railroad, however strong financially, however economical in its facilities, or favorably situated as to traffic, is not entitled as of constitutional right to more than a fair net operating income upon the value of its properties, which are being devoted to transportation.

If the weaker roads were permitted to charge higher rates than their competitors, the business would seek the stronger roads with the lower rates, and congestion would follow. * * * By investment in a business dedicated to the public service, the owner must recognize that, as compared with investment in private business, he can not expect either high or speculative dividends, but that his obligation limits him to only fair or reasonable profit. If the company owned the only railroad engaged in transportation in a given section and was doing all the business, this would be clear. If it receives a fair return on its property, why should it make any difference that other and competing railroads in the same section are permitted to receive higher rates for a service which it costs them more to render and from which they receive no better net return.

We next come to the question, Are divisions effective? Time has demonstrated that the rule of divisions alone does not serve to effect an equitable distribution of the revenue derived from transportation, and I will tell you why. Take a competitive line, and I mean by competitive line that it serves more than a community or town. local to its own road. Take the railroad I am connected with, which serves or connects with four different systems of railroads, trunk line systems, at four different important towns. Now, if that road should be given higher divisions than are given to those other competitive lines, then the railroad that originates the traffic at the centers now would give the traffic to the other road that gets less divisions than I do and I would not get any. Therefore, it has been proven impracticable for these competitive lines or for the commission to give them higher divisions. I do not know whether I make myself clear or not. I would like to make myself clear because that is the crux of this matter of divisions. Let me go further into this situation. All traffic that reaches the Gulf, Texas & Western Railroad out in west Texas comes through the railroad center of Fort Worth, Tex. That road connects with the Gulf, Colorado & Santa Fe, with the Texas Pacific, the Rock Island branch of The Katy, and the Burlington, and all of these lines center at Fort Worth. Suppose that the Texas Pacific, with which my road connects at one end and with which it does most business, is required to give it larger divisions than the Texas Pacific is required to give to the Rock Island, Santa Fe, or to the Burlington. The Texas Pacific and the commission can not compel them to deliver this freight to that little railroad. All it can do would be to compel them to give better divisions than required to give to others, but the commission can not require them to give it unless they need it, so every pound of freight the Texas Pacific gets at St. Louis from the Missouri Pacific system will be stopped there at Fort Worth and given to this other carrier that connects with that because the Texas Pacific gets more out of the haul.

Mr. NEWTON. Before it reaches this other road.

Mr. CAIN. Therefore, you can not compel an increase of the division in that competitive situation.

It is, therefore, necessary in the light of experience to fully apply the recapture principles if the purpose of Congress is ever to be accomplished, for I think it is as certain as anything can be, that many short and weak roads will not be voluntarily absorbed by their stronger connections, hence they must have financial sustenance or cease to function. I am not able to see how the commission can intelligently

and efficiently discharge its full duty of regulating interstate commerce with due regard to the general welfare without adopting some sort of plan. I do not mean by plan a map. I do not mean that it is necessary for the commission in the adoption of any plan to at once do what they thought they had to do under the present law. I differ with, perhaps, the majority, in my interpretation of the present law, because I insist that the present law would allow the commission to adopt a plan without allocating all of the roads. The truth of the matter is that you are here to try to make a plan, and if the commission simply adopted rules under which it would permit the railroads to consolidate and the plan was sufficiently complete, then a plan has been adopted but for the fact that the present law requires or provides that no road can be consolidated except in accordance with the plan, and it appears and ought to be necessary to be done at once, and, therefore, myself, I am not so sure there would be any need for very much of a change in that respect.

Now, I am not dogmatic as to the adoption of a plan, but I do insist that if there is no plan, then the whole purpose of the law as to providing adequate transportation will fail unless the carriers are grouped into provisional systems for the purpose of administering the law, especially in respect of divisions and the recapture and distribution of excess earnings.

Persons interested in strong lines oppose the grouping of the roads or the adoption of a plan because they say it will serve to inflate the values of the short and weak road. They say owners and speculators will ask more than the properties are worth. They also say that to pay a price not justified by the application of sound business principles would be an injustice to stockholders of the strong road.

I have never found myself able to follow this line of reasoning to the same conclusions these gentlemen reach. So long as consolidation is voluntary and not compulsory, owners of short and weak roads know they must trade with owners of the strong roads. They know, furthermore, that no road can be taken over by another except at such price and upon such terms as the commission will approve, and finally, if a small or weak road is sold to a strong line the purchasing road is not required to take anything from its own earnings to support it, because, as I have pointed out, each road and every road is entitled, through proper divisions, to have such a proportion of all the revenue paid for transportation by the people as will give it a fair return, or, in other words, considering cost of capital or fair return as an item in the cost of producing transportation, each carrier is entitled to such a division of the revenue as will be equivalent to what it costs it to produce the transportation.

I believe I have made it plain that, in my humble opinion, we can not hope that all of the short and weak carriers will be absorbed. I think it is proper to assume that no very substantial number of the several hundred short-line roads will be taken over, certainly not for a considerable period of time. The number will be greatly increased and mergers largely stimulated if in addition to what is proposed in this bill, other features such as a change in the provisions of paragraph 4 of section 15 of the interstate commerce act, establishment of provisional systems or groups and the distribution of all excess revenues to carriers which fail to earn a fair return, shall be added.

99790—26——13

You may not recall what I mean by paragraph 4 of section 15. I think that is an important thing to consider in this connection in establishing interstate through routes, and I call your attention to the fact that that was one of the four corner posts of the transportation structure. Paragraph 4 of section 15 reads as follows:

> In establishing any such through route the commission shall not (except as provided in section 3, and except where one of the carriers is a water line), require any carrier by railroad, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini of such proposed through route, unless such inclusion of lines would make the through route unreasonably long as compared with another practicable through route which could otherwise be established.

Let me explain that. I call to mind a railroad that extended from Kansas City up into Nebraska, with one piece of short-line railroad in Nebraska known as the Kansas City Northwestern, that was 163 miles long and built in highly competitive territory. Of course, looking backward, and our hindsight is better than our foresight, we would not have built it to-day. But it was built, and along that line of railroad communities grew up, industries were established, and that road sought from the time it was finished and constructed, until it was finally finished, and the word finished was written at the end of its history, to have the Union Pacific agree that where it connected with it in the State of Nebraska, through routes from Kansas City to the Pacific coast would be established. The Union Pacific, having a line into Kansas City, refused, and the commission, with this law before it, could not give relief to that carrier. That carrier was largely locally owned and could go to the merchants of Kansas City and procure routing orders for the Pacific coast, and likewise to the Pacific coast and procure routing orders for Kansas City, which would have enabled it to live, but through a tempestuous life it struggled to do that and failed, and to-day that road is being taken up. It has been abandoned by order of the commission and is being taken up, and those people are having to find some other means of transportation.

Mr. NEWTON. The track has been taken up and the service abandoned?

Mr. CAIN. Yes. I respectfully submit that it is not only sound governmental policy but sound business to preserve and utilize most of these carriers as units in the transportation system that the country as a whole may have such adequate transportation service as can not be produced except through steam-railroad transportation.

If the adoption of a plan for consolidation is to be left out of the law, then the commission should be told in plain terms to group the carriers into provisional systems for administration purposes, using the systems resultant from voluntary consolidation as the nuclei for such groups. If relief of this character can not be had, then you are only making a bad situation worse for the eternal conflict between the strong and weak will continue, while each day the strong is made stronger and the weak weaker through a miscarriage of legislation intended to aid the weak.

That brings me to the discussion of the bill itself. I want to say, Mr. Chairman, that so far as this bill goes I regard it as excellent, but, as you can see from what I have said, I do not think it goes

sufficiently far. I think that some provisions of law should be embodied, and I have prepared a suggested amendment which I will not assume to read; but I think the law can be amended so that the commission would be required to group these systems for the purpose of making proper divisions and distribution of revenue, and they could certainly more effectively administer the transportation act from every standpoint.

Mr. NEWTON. Group these carriers? You mean all the carriers?

Mr. CAIN. All the carriers. The commission has that power to-day but they had the power when 15–A was passed to give a fair return, and it was their duty, but they needed the support of congressional mandate. The commission has pressure, as you know. In my opinion it is necessary that the commission should be told in plain terms that you must group these carriers into provisional systems in order that you can administer this law. Now, if that is to be done and you should pass substantially what the Senate bill includes in the way of recapture, you would then make such an equitable distribution of revenue derived from the rate level as that every and each carrier would receive the cost of transportation that it furnishes; and if it does not furnish any it could not and should be abandoned, and I think you would settle this problem.

Mr. HUDDLESTON. We do not know yet what the Senate has provided on the subject. We would be putting our heads into the water without getting anything out of it.

Mr. CAIN. Thank you for calling my attention to it. The Senate bill provides for a plan. It provides that at the end of five years or by the end of five years the commission shall establish a plan, not to interfere with the grouping that has already occurred by voluntary agreement between carriers, but where carriers have voluntarily grouped themselves and have not finished grouping as the commission considers it ought to be done, that then they shall go ahead and complete that grouping. That is for the purpose of administering the other features of the law, that after the plan is finally adopted as a plan, that then the carriers shall pay in to the commission not 50 per cent of the revenue as to-day but 100 per cent, or, in other words, everything in excess of the fair return, and that shall be distributed to the carriers that did not earn a fair return, using a three-year period, the average of a three-year period to determine what the carriers have earned, and that whenever the systems have been finally completed and they are to be formed progressively, that then any system finally completed need not make any return of the excess but its earnings shall be distributed to all the members of that group, and if it is less or more, it has to, of course, even up with the other groups.

Mr. NEWTON. You mean by the Senate bill the bill that has been recently reported out of the committee and is now pending before the Senate?

Mr. CAIN. Yes; it is too long for me to read to you here. But the Senate bill reported out of the committee, from pages 24 to 30, inclusive, includes this plan of grouping carriers and administering the distribution of the recaptured earnings to roads that did not earn as much as 5 per cent. It gives them not only a fair return but distributes it.

Mr. RAYBURN. How does it distribute it?

Mr. CAIN. The commission distributes it 5 per cent upon the value of the respective carriers.

Mr. RAYBURN. You mean that it provides for distributing the recaptured earnings by the way it is to be administered?

Mr. CAIN. Yes.

Mr. RAYBURN. And gives it to them?

Mr. CAIN. It does not give it to them. I have tried to show you that they earned it as part of the transportation.

Mr. RAYBURN. They have not got it, and the commission has it, and the only way they can get it is for them to give it to them, to transfer it.

Mr. CAIN. Yes; I did not quite understand your expression of giving it to them.

Mr. LEA. The surplus would be retained by the Government as at present, the surplus of the recaptured fund?

Mr. CAIN. It would have to be distributed; that surplus would be distributed. If it was only 50 per cent up to the time that this consolidation plan was effected they would get only 50 per cent as now but they would distribute to numbers of carriers and not as now done, because now it is a contingent fund to be used in a particular way and it would be distributed to the carriers in general, 5 per cent. Is that correct?

Mr. THOM, Sr. Yes; the Government would not have it. Every carrier would be given its share.

The CHAIRMAN. Can you be back Tuesday morning, Mr. Cain?

Mr. CAIN. I would like to come back the latter part of the week but I do not know whether I can get back or not by Tuesday.

(Thereupon, at 12 o'clock m., the committee adjourned to meet again at 10 o'clock a. m., Tuesday, June 8, 1926.)

RAILROAD CONSOLIDATION

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Tuesday, June 8, 1926.

The committee met at 10 o'clock a. m., Hon. James S. Parker (chairman) presiding.

The CHAIRMAN. The committee will please come to order. Mr. Goodwin.

STATEMENT OF ELLIOT H. GOODWIN, RESIDENT VICE PRESIDENT, CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, WASHINGTON, D. C.

The CHAIRMAN. You will please state whom you represent.

Mr. GOODWIN. My name is Elliot H. Goodwin. My position is resident vice president of the Chamber of Commerce of the United States, and my function here is to represent the president of the chamber in his absence from Washington.

Speaking to House bill 11212, I wish to present, not the bill itself, but the position of the Chamber of Commerce of the United States in regard thereto, a position which is ascertained, as those of you who have any familiarity with the procedure of the chamber will know, not through any officer or board of directors or special committee, but through submitting questions to the membership themselves, either through meetings—we hold but one meeting a year—in the familiar way of resolutions, and having the matter submitted to the membership in advance, or through our referendum system.

In this case I am dealing almost exclusively with the referendum system, a method by which propositions are drawn up in writing and submitted to the membership—we are a federation of organizations, so that our members are these commercial organizations throughout the country—with the arguments both for and against the propositions, and with 45 days allowed for a vote.

We have given, gentlemen, in the past, a great deal of attention to the subject of railroad transportation.

Mr. RAYBURN. Mr. Goodwin, before you get any further, let me ask you this question: I am very much interested in this referendum. Just how do you take that? Do you send out the questionnaire alone, or do you send it with arguments?

Mr. GOODWIN. With arguments.

Mr. RAYBURN. Arguments for?

Mr. GOODWIN. Arguments for and against.

Mr. RAYBURN. You mean that you send out with each questionnaire arguments on both sides?

Mr. GOODWIN. Yes, sir. I am going to put this referendum in evidence, Mr. Rayburn. I have copies here to distribute to all the members and if you will permit, Mr. Chairman, I will do it now, be-

cause I am going to refer to this referendum very frequently, and I should be very glad if you had it before you.

Mr. RAYBURN. I shall be very glad to see it.

Mr. LEA. I should like to ask a question with reference to this referendum. Who prepares the arguments for and against the various propositions submitted by the Chamber?

Mr. GOODWIN. The argument for is prepared by the committee. We are trying, as far as we can, to duplicate with a membership that is scattered all over this country, the procedure of a legislative body; that is, with a membership that can not be called together, to debate and discuss a committee report. We are coming as near to that form as we can through our referendum system.

We begin, as you do, with a report of a committee, a committee that is selected by the board of directors of the chamber, with a view both to its knowledge of the subject, its expert character and geographical distribution. They proceed in exactly the way a committee of Congress proceeds, to draft a report. That report contains propositions, of course, the recommendations, and it contains the arguments in favor of the recommendations. That disposes of one side of the referendum.

Now, if you will just refer to that pamphlet at, let us say, page 6 you will find that on the left-hand side, running right through, is the report of the committee and on the right-hand side are the arguments in the negative.

I am referring to the letter-size document in the buff cover, Referendum No. 43. Turning to page 6 or page 8 or page 10, you will find the report of the committee on the left-hand side of the page and the arguments in the negative on the right-hand side of the page, to bring the arguments against, opposite the recommendation of the committee.

The CHAIRMAN. Where did you say it is?

Mr. GOODWIN. You will find the report of the committee beginning on page 4, which is not a numbered page, and on page 5, opposite the arguments in the negative.

Therefore the question of the Congressman to me would come down to: How are the arguments in the negative prepared? They are prepared by our research department as a straight research job, which is exactly as a lawyer assigned to the other side of a question prepares his brief.

We have in that department a number of lawyers trained in legal procedure, and they have before them the report that the committee has made, which is, of course, a great advantage in preparing their argument in the negative.

As to our experience with that, you will notice that this is referendum 43 and we have since reached referendum 49. That covers 14 years of experience, and I am frank to say that the testimony as to the arguments in the negative is generally that they are much stronger than the arguments in the affirmative.

If you will give credit to a research department that is in good faith preparing the arguments in the negative as you would as a lawyer in a case, you will see why that is so. Every report of a committee has to have concessions to the different members and is often weakened thereby.

When one man as counsel takes that and prepares the negative argument he is not bothered by other members of the committee. He has to make no concessions. He has the case all before him and can prepare the argument for himself.

Mr. LEA. In that connection, does that mean that no referendum is submitted by the chamber until the committee has affirmatively declared in favor of it?

Mr. GOODWIN. If you will take this point of view, that a committee starts to study the question and there is no pro or con up to the time that the committee makes its report; and it may make its report simply by a majority, in which case the referendum will include the minority report.

Mr. LEA. But if a majority of the committee are not in favor of the affirmative side, would that mean that there would be no referendum?

Mr. GOODWIN. No. You start fresh with a proposition, not with approval or disapproval. You appoint a committee to study a problem and the affirmative is the side that the majority of that committee takes.

The CHAIRMAN. Would you like to proceed with your argument without interruption?

Mr. GOODWIN. I do not care, Mr. Chairman. I think, in what I have to say, if I am allowed to go through this brief document I have to present, I will probably come to the points the committee has in mind. But I am very glad to stop anywhere and explain such a matter as the referendum system of the chamber.

The Chamber of Commerce of the United States, on behalf of the business men of the country, supports the major provisions of the House bill, H. R. 11212.

The chamber is a federation of more than 900 local chambers of commerce and 500 national trade organizations with an underlying membership of 800,000 business men in every State of the Union. This federation was organized in 1912 for the purpose of ascertaining business opinion throughout the country upon the most important measures affecting commerce and presenting the result for the consideration of officials or legislative bodies that have the power to put those measures into effect. The organizers of the national chamber did not seek a snap judgment but a considered judgment, not that of a few but of the many, not that of the big alone but of the small as well. Big business, small business, north and south, east and west, trade associations and community commercial organizations, pool their opinions with a view to having that which is clearly the prevailing one expressed to those who control the destiny of commerce through legislation and administration.

I should like, Mr. Chairman, to emphasize the point, because you are familiar, as I am, with comments on the Chamber of Commerce of the United States as representing big business.

Now, we represent not firms and corporations. We represent commercial organizations. That is the first point. It is they that vote and determine our policy, and they are located all over the country, and the great mass of them are the small organizations. Naturally, the small organizations exist in the smaller communities.

It is a very interesting thing to know that the organizers of this chamber placed in the by-laws, and it has remained there ever since, a certain disability on the part of the larger organizations which exist in the big commercial centers, something that I think most of you are very familiar with—certainly I am in New York and your chairman will back me up—where there is a discrimination against the larger cities and in favor of the country districts in the apportionment of the number of representatives in the Legislature of the State of New York.

Precisely along that same line, there is a provision in our by-laws that organizations shall vote, shall have a number of votes according to the number of their members. There shall be one vote for the first 25 members, one vote for each 200 in excess. Then comes the provision that no organization shall have more than 10 votes.

I do not remember the figure, but roughly let us say, at about 2,025 you get the maximum of 10 votes, and to show you how that is a restriction upon the larger organizations, I will point out that the Los Angeles Chamber of Commerce has to-day in excess of 10,000 members.

During the past eight years the chamber has followed closely the development of the policy of Congress with respect to railroad consolidation, and has twice taken a referendum vote of its members to determine whether the business men of the country approve that policy.

In 1919 the chamber held in Washington a national transportation conference, including in its membership representatives of all of the interests of the Nation—financial, industrial, commercial, agricultural, civic, and social—affected by transportation. After careful consideration of the entire railroad situation, extending over a period of more than eight months, this conference formulated a legislative program that included as one of its most important features a recommendation in favor of permissive railroad consolidation. When this program was submitted to the members of the chamber of commerce in referendum 28, they approved by a vote of 1,309 to 125 "Permission for consolidation of railroads in the public interest with prior approval by Government authority in a limited number of strong competing systems."

In 1923–24 the chamber organized a second national transportation conference which again reviewed the transportation situation of the country and sought to develop the best business opinion concerning it. One of the committees of that conference made an extensive study of the subject of railroad consolidations. I wish to present for your consideration the report of that committee which contains a statement in considerable detail regarding the need for railroad consolidations and the advantages to the public which may be expected therefrom.

That is the pamphlet that has been distributed to you called the report of the special committee 2 dealing with railroad consolidation.

The conference itself approved that committee report and shortly afterwards the national chamber in referendum 43 voted on the principal questions involved. In this referendum the members of the chamber by a vote of 1,495 to 470 advocated "Supplementary legislation in harmony with the general principles of the transportation act to facilitate consolidation by voluntary action, subject to the approval of the Interstate Commerce Commission." The referendum report contains a concise statement of the chamber's attitude on railroad consolidations to which I desire to invite your attention. The statement is as follows:

I am referring to page 16, if you will follow me, and remember that you must skip the opposite page which is devoted to the argument in the negative.

It has been urged that consolidation be made compulsory. Compulsory consolidation, however, involves so many constitutional questions and is such an intricate and involved proposition that it might hinder rather than promote consolidations, and should not be considered at this time.

Experience already obtained in endeavoring to work out consolidations under the transportation act indicates the need of supplementary legislation to perfect its consolidation provisions. It is, for example, desirable to render possible the joint ownership of certain lines or terminals by two or more of the consolidated systems. Furthermore, instead of requiring, in each instance, the creation of a new consolidated corporation, and exchange or reissue of the securities of the existing corporations, it appears desirable to permit any of the large existing systems to purchase the physical properties of any railroad company if approved by the Interstate Commerce Commission, or to exchange their own securities for those of the roads to be acquired and thereby have the smaller railroad companies absorbed by and merged into the existing systems.

It will doubtless also be necessary to provide some method of dealing fairly with the minority stockholders so that plans approved by the commission and assented to by a majority of the owners can not be blocked by a minority interest. Again, on account of the heavy taxes which would ordinarily be levied on such mergers, special provisions of law may be necessary to relieve consolidations of this burden.

Furthermore, in cases where new systems are to be created, appropriate agencies will be needed to supervise and promote the actual accomplishment of the consolidations. Presumably the Interstate Commerce Commission will require within its own organization a special bureau to supervise the work; and it would seem desirable that, at the appropriate time, an organization committee should be created for each proposed consolidated system to assist in bringing about agreement upon the values of the several parts of the system to be formed, the ratios of the securities to be exchanged and the many other details involved in bringing several companies into one organization.

Mr. Chairman, I should like to submit this referendum in evidence, and inserted therein is the report of the voting which I should like to have considered a part thereof.

In that connection, this special bulletin gives the vote upon every question submitted, and then you may be interested in the fact that we invariably follow the practice of showing how every organization voted upon every question that was submitted. These organizations are arranged alphabetically under States.

In order to show the views of the chamber regarding the main features of the present law and the changes proposed by the Parker bill I am submitting a comparative analysis for your consideration. From this analysis you will see that the chamber strongly supports the major propositions of the Parker bill. The chamber has for years considered the consolidation of railroads on sound principles to be one of the most essential measures for assuring to the public continued efficient transportation service and earnestly hopes that Congress will promptly enact necessary supplementary legislation to facilitate such consolidation.

Mr. NEWTON. I want to ask a question with reference to this balloting, if it will not interrupt the gentleman.

Mr. GOODWIN. All right, sir.

Mr. NEWTON. I notice, for example, Minnesota: Minneapolis Civic and Commerce Association under the Roman numeral I—that is page 10—has 10 votes for and no votes against. What does that mean? Where do you get 10 votes?

Mr. GOODWIN. That means that the Minneapolis Civic and Commerce Association is entitled to the maximum number of votes, which is 10, and their board of directors, in voting, has the right to cast 10, while a smaller organization would cast 9, and a very small one would cast 1.

They can split that vote, or as in this case, throw it all one way, just as they see fit.

Mr. NEWTON. In voting, do they submit the questions, prior to the vote, to their members by way of referendum, or do they vote their own judgment and convictions?

Mr. GOODWIN. They have a great variety of methods of arriving at their own vote, and it is our function merely to ascertain that they have cast their vote in accordance with their own constitution and by-laws, just as they would upon a Mississippi River project, which comes to them, not through the Chamber of Commerce of the United States, but from some other channel.

How they do it depends upon their own constitution, and the leeway that that gives, and what they wish to adopt.

Mr. NEWTON. That answers the question.

Mr. GOODWIN. Mr. Chairman, I want briefly, having given you the history of the chamber's consideration of this question of consolidation, to present to you the relation of the chamber's policy to the bill that bears your name.

COMPARISON OF EXISTING LAW WITH PROVISIONS OF THE PARKER BILL (H. R. 11212) AND POSITION OF THE CHAMBER OF COMMERCE OF THE UNITED STATES

POLICY OF CONGRESS

The present law.—In the existing law Congress took action favorable to railroad consolidation and specifically authorized the Interstate Commerce Commission to permit consolidations under certain conditions.

The House bill.—The House bill (H. R. 11212) reiterates in substance the declarations of the present law, stating it—

> to be the policy of Congress (in order that an adequate and efficient transportation service may be maintained in the United States, and necessary weak and short lines be preserved) to authorize and encourage the unification * * * of the property of carriers into a number of strong and efficient and well-balanced systems which will so far as practicable maintain the existing routes and channels of trade and commerce and preserve as between themselves the advantages of effective competition in service so that the properties of the carriers in each system shall ultimately be managed and operated and owned or controlled by a single corporation, economy be promoted, unnecessary duplication and wasteful competition eliminated, better service afforded, and the traffic moved at the lowest rates compatible with the maintenance of adequate and efficient transportation service.

The national chamber.—The business men of the country as represented by the national chamber approve this declaration of policy.

COMPREHENSIVE PLAN

The present law.—The present law directs the commission "to prepare and adopt as soon as practicable a plan for the consolidation of the railway properties of the continental United States into a limited number of systems, preserving competition as fully as possible and wherever practicable maintaining the existing routes and channels of trade and commerce." The law requires the commission first to agree on a tentative plan and then to hold public hearings upon it. In 1921 the commission adopted a tentative plan and since then has held hearings in all parts of the country at which the carriers, the shippers, and the general public have had full opportunity to express their views. These hearings have built up on a comparable basis a voluminous record of facts pertinent to railroad consolidation—a record that should be invaluable to the Interstate Commerce Commission when it undertakes to pass upon future applications for permission to consolidate.

The House bill.—The House bill repeals that section of the present law which directs the commission to prepare and adopt a comprehensive plan and permit only those consolidations that are in harmony with this plan; and in its place provides that if the commission is of the opinion that the public interest in adequate and efficient transportation service and the declared policy of Congress will be promoted by any proposed unification, it shall approve the unification on such terms and conditions as it may prescribe as necessary in the public interest; and that the commission shall give due consideration to the inclusion in such proposed unification of short and weak carriers in the territo y involved. The bill also provides that in considering future applications for permission to consolidate, the commission is authorized to use any of the evidence that appears in the record of proceedings held under the consolidation provisions of the transportation act.

The national chamber.—The national chamber is committed in support of this policy of permissive consolidation. In referendum 28 the chamber of commerce recommended—

> that when approved by public authority and declared to be in the public interest, the railroads be allowed to consolidate to such extent and in such manner as may be necessary to enable the existing railroads to unite in a limited number of strong competing systems so located that each of the principal traffic centers of the country shall if possible be served by more than one system.

In the argument supporting this declaration the chamber said:

> The consolidation of railroads, as well as the coordination of their facilities should be subject to the approval of the Government, and, with such authorization required, the railroads should be encouraged to work out the natural grouping of systems and to combine their facilities in the interest of traffic economy and financial stability.

FORMS OF CONSOLIDATION

The present law.—The present law gives the Interstate Commerce Commission power (a) to authorize a carrier to acquire control of any other carrier under a lease or by the purchase of stock or in any other manner not involving consolidation into a single system for ownership and operation, and (b) to permit two or more carriers to con-

solidate their properties into one corporation, for ownership, management, and operation under certain conditions; but it does not give the Federal commission complete control over all forms of unification.

The House bill.—The House bill confirms and broadens the present authority of the commission. It concentrates in the commission power to authorize two or more carriers to enter into any one of the possible forms of unification or consolidation including (a) an acquisition by purchase, sale, exchange or lease of properties and franchises of one or more carriers; (b) a corporate merger or consolidation of two or more carriers; or (c) an acquisition of securities issued by a carrier if proposed as a part of a plan to effect unification—each of these forms of consolidation to be carried out under the authority of the Interstate Commerce Commission and under the provisions of the Federal law.

The national chamber.—The business men of the country through the national chamber, in addition to supporting the provisions of the present law that are intended to make possible the completion of the normal process of railroad consolidation, favor the passage of legislation that will give to the Interstate Commerce Commission the additional authority necessary to permit other desirable forms of consolidation not authorized by present law. Referendum 43 states:

> Furthermore, instead of requiring, in each instance, the creation of a new consolidated corporation, and exchange or reissue of the securities of the existing corporations, it appears desirable to permit any of the larger existing systems to purchase the physical properties of any railroad company if approved by the Interstate Commerce Commission, or to exchange their own securities for those of the roads to be acquired and thereby have the smaller railroad companies absorbed by and merged into the existing systems.

POWER TO INCLUDE OR OMIT PROPERTIES

The present law.—The commission has interpreted the present law to mean that it has no authority to omit any railroad properties from the complete plan, or to require that any particular railway property shall be included in a proposed consolidation or to provide for the common use of certain railway properties.

The House bill.—The House bill authorizes the commission to impose as a condition to its approval the inclusion of a carrier that did not join in the original application. It makes no reference, however, to the omission of properties that may, in the opinion of the commission, be needed for the common use of other carriers.

The national chamber.—The national chamber supports the provisions in the House bill which give the commission authority to approve any proposed unification that is in the opinion of the commission in the public interest, and further believes that Congress should render possible the joint ownership of certain lines or terminals by two or more of the consolidated systems.

MINORITY STOCKHOLDERS

The present law.—The present law makes no specific provision for dealing with the claims of minority stockholders who dissent from the opinion of a majority of the stockholders in regard to the terms on which a proposed consolidation shall be completed. Many people regard this as a serious defect in the present law tending to result in long and expensive proceedings that could be greatly abridged if the law made definite provisions of suitable machinery for dealing with the claims of minority stockholders.

The House bill.—The House bill requires dissenting security holders to give notice of their dissent within 90 days after the meeting at which the holders of voting securities consent to the proposed unification; and requires the resulting corporation to purchase the securities owned by the dissenting security holders. It also authorizes the resulting corporation to acquire, by condemnation if necessary, the securities of any dissenting security holders; authorizes a dissenting security holder whose securities have not been purchased after six months to institute in his own behalf proceedings for the condemnation by the corporation of the voting securities held by him; and gives the United States district courts jurisdiction to hear and determine condemnation proceedings and to require the Interstate Commerce Commission to act as a board of appraisers to report to the court the value of the property involved.

The national chamber.—The national chamber favors the provision of some method of dealing fairly with minority stockholders so that plans approved by the commission and assented to by a majority of the owners can not be blocked by a minority interest.

TAXATION

The present law.—The present law makes no provision for exempting from taxation the processes employed in bringing about a consolidation.

The House bill.—The House bill exempts such processes from taxation.

The national chamber.—The national chamber in referendum 43 pointed out the need, in the interest of facilitating consolidation, for special provisions of law to relieve consolidations of the burden of the heavy taxes which would ordinarily be levied on such mergers.

I thank you, Mr. Chairman.

The CHAIRMAN. Are there any questions?

Mr. HUDDLESTON. I am interested to know whether you approve the particular provisions of this bill relating to the condemnation of minority stock which dissents?

Mr. GOODWIN. It has appeared to us to be adequate in the protection of the minority stock interests.

Mr. HUDDLESTON. The provision is to have a condemnation proceeding with a valuation by a jury; that, you think, is a fair proposition to minority stockholders?

Mr. GOODWIN. We so regard it.

Mr. HUDDLESTON. Of course, you recognize the fact that in a great many instances—in fact, probably a majority of them—the value of the stock is largely speculative and for control purposes, and there may be many purposes which can not be translated into a financial valuation.

Mr. GOODWIN. I realize that, sir; and yet it is a comparative question of methods, and we have not been able to devise one that would be fairer than this proposition.

Mr. HUDDLESTON. I have in mind the railroads that have a larger bonded or other indebtedness than is considered to be the value of the road, so that the common stock would not be worth anything intrinsically, yet, on the market, it has a sale value for control purposes and for speculative purposes, and for purposes relating to the future, and contingencies of that kind. I am wondering how a jury would ever be able to reach the value of that stock, how it would ever be able to ascertain it.

Mr. GOODWIN. I am aware of the difficulty, sir; but I am not aware of any proposition for better machinery for the protection of the rights of the minority stockholders.

Mr. HUDDLESTON. Would you feel in a case like that that the market on the stock being, we will say, at 10 for a long period prior to the condemnation, that it would be fair for the jury to assess its value for condemnation purposes at, we will say, 2?

Mr. GOODWIN. I would not consider that the market value quotation on that stock or any other stock would be a fair basis of assessing the value. It would be just one item in interest.

Mr. HUDDLESTON. Would you think it would be fair for the jury to take that into consideration?

Mr. GOODWIN. Yes.

Mr. HUDDLESTON. Suppose that it were matle to appear that the stock had no intrinsic value; it would be your idea that the jury would so find, although it had a market value?

Mr. GOODWIN. You say it was made to appear——

Mr. HUDDLESTON. Yes. Suppose the evidence were presented in a reasonably satisfactory manner to the effect that the stock had no intrinsic value, no earning value, yet it had a market value for contingencies, such as I have mentioned.

Mr. GOODWIN. I think I shall have to declare myself to be unable to answer that question, because of my lack of knowledge of proceedings in such matters.

Mr. HUDDLESTON. I asked the question in order to disclose the extreme difficulty, if not impossibility, of a jury reaching a fair verdict in these cases, and I am wondering whether you have nothing else to suggest.

Mr. GOODWIN. No; I have nothing further to suggest, sir.

The CHAIRMAN. Are there any other questions?

Mr. HOCH. You spoke, among other things, especially with reference to the taxation features of this bill. Will you state just what taxes any of these mergers would be relieved of by this bill, either under the Federal law or State laws?

Mr. GOODWIN. I can not.

Mr. HOCH. It would seem to me the recommendation of the chamber is not significant without that.

Mr. GOODWIN. I am perfectly aware that the taxes exist, but if you ask me for the special nature of the national and State taxes on an issue of securities I am not familiar with that.

Mr. HOCH. That is all.

The CHAIRMAN. Can't you state in a general way how these corporations are relieved from taxes?

Mr. GOODWIN. How they are relieved?

The CHAIRMAN. Yes; under this bill.

Mr. GOODWIN. I made that statement, Mr. Chairman.

The CHAIRMAN. I mean specifically. Take a hypothetical case where a consolidation is made.

Mr. GOODWIN. Do you mean the particular taxes that would apply?

The CHAIRMAN. Yes; that is what I mean. Suppose, for instance, that the New York Central or the Pennsylvania were going to combine with the Baltimore & Ohio. Take that for illustration; the securities are exchanged. How would the resulting corporation be relieved from taxes in that case?

Mr. GOODWIN. The bill, in fact, provides that they shall be exempt from taxes.

The CHAIRMAN. For how long?

Mr. GOODWIN. I shall have to refer to the bill.

The CHAIRMAN. Isn't this the case: For instance, if the Baltimore & Ohio stock costs 100 and it was exchanged at 120, you would not have to pay taxes on your 20 per cent profit until you cashed it in. In other words, your taxes would not have to be paid until you actually got the money. That is the point that I meant to bring out. Does that answer your question, Mr. Hoch?

Mr. HOCH. Not entirely. I do not care to pursue it if the witness is not prepared to answer these questions which he has discussed in his statement, but the bill refers, of course, not only to Federal taxes but to State taxes. I wanted a statement for the record of the nature of the present taxes that would be involved either in a matter of the issuance of stock or securities of any sort, or in the matter of incorporation or reincorporation, so that we might understand precisely what sort of taxes and the nature of those taxes we are relieving by this bill.

Mr. GOODWIN. Mr. Chairman, would it be of benefit to Congressman Hoch if we should undertake to prepare a statement of that kind, because that we can undertake to do?

Mr. HOCH. I assume that somebody will be prepared to answer the question. I do not care who prepares it.

The CHAIRMAN. Will you have a statement prepared for the record?

Mr. GOODWIN. We will, Mr. Chairman.

Mr. SHALLENBERGER. I should like to ask a question. In a general way, has your chamber of commerce taken into consideration the fact that this bill practically eliminated competition as a factor in securing the best and most effective service to the public?

Mr. GOODWIN. I did not so understand it. To what do you have reference?

Mr. SHALLENBERGER. Is it not possible under the law for all the railroad companies to be consolidated into one company? There is no limit other than the opinion or judgment of the Interstate Commerce Commission as to any certain number of railroad corporations that shall be left after this law shall go into effect?

Mr. GOODWIN. You mean that there is no limit placed——

Mr. SHALLENBERGER. At least under the construction of the Interstate Commerce Commission of the meaning of the present act, in which they attempted to have a certain number of large corporations, 18 or 20.

Mr. GOODWIN. But there is no such provision in the transportation act that fixes the number or fixes a minimum, is there?

Mr. SHALLENBERGER. No; but this act prepares the way so that it would be possible for a complete consolidation. It is rather evident, I think, to those who consider the subject fairly, that the commission and the railroad companies who wish to consolidate, have decided that under this law they can not do it. Now we come to a law which proposes to make as easy as possible, as certain as possible the removal of those legal restrictions, to make it possible under the approval of the Interstate Commerce Commission to consolidate the railroad systems into a very small number of larger systems.

It has been stated here, I think by one of the witnesses who knows what he is talking about, I am sure, that it would be a possibility to consolidate them into one or two systems which would practically do away with the element of competition in being a determining factor in the public welfare. It removes competition.

Mr. GOODWIN. I certainly had not so construed the bill and the purpose of the chamber could not be so construed.

We have always stood and now stand for competing systems and have had no conception of the reduction of the number of competing systems to one or two, nor do I fear that, as a matter of fact, under this legislation.

It seems to me that in the transportation act it has been made clear that the objective is not one system here in the United States which shall control, but a limited number of competing systems so that the communities of the country shall have all the advantages of competition.

Mr. SHALLENBERGER. There is no competition between railroads as to freight rates now, is there?

Mr. GOODWIN. No; but there is as to service.

Mr. SHALLENBERGER. This law, as I view it, if it is passed, would make possible the elimination of competition between the railroad companies in general, even as to service, if we reduce their number to such a limited number that we could not have actual competition, because of the fact that the public would be required to accept the service of one system or none at all.

Mr. GOODWIN. Of course, you have the protection of the Interstate Commerce Commission. But we come to the underlying purpose of the bill, and the bill as I construed it, has been not to remove those provisions which were intended in the transportation act to allow consolidations in order to set up strong competing systems, but to remove those restrictions which were in the transportation act that now stood in the way of that.

In other words, it was not with a view to reducing the number of systems, but to make possible what was the real object of the transportation act.

Mr. SHALLENBERGER. It must be to remove something or add something to the transportation act that it does not contain at the present time.

Mr. GOODWIN. The transportation act was unduly restricted, which is shown both by the purpose of this law and in the opinion of the Chamber of Commerce of the United States.

I think that it is plain that those provisions which I think are here repealed stood in the way of voluntary consolidations, which, in my opinion, the transportation act itself contemplated. Experience has proved that they were unduly restrictive, and, in fact, I think we

may say that the comprehensive plan idea has served its purposes and is not now generally regarded as a workable system for bringing about desirable consolidations in the future.

Mr. SHALLENBERGER. Do you consider that the chamber of commerce has decided that it is safe public policy for the Congress to turn over these additional great powers and make this bureau of the Government practically all powerful in the administration of this great transportation system, as we are doing here?

Mr. GOODWIN. In so far as the bill goes; yes, sir.

Mr. SHALLENBERGER. Do you think we are not going too far? Do you think that we better the public service given by the railroads through the elimination of competition?

Mr. GOODWIN. No; not by the elimination of competition.

Mr. SHALLENBERGER. As a shipper, do I get as quick service or as cheap service as I did before the Interstate Commerce Commission began to eliminate competition?

Mr. GOODWIN. How far are you going back?

Mr. SHALLENBERGER. I am going back to the time when they began to eliminate it, 15 or 20 years ago.

Mr. GOODWIN. I think that competition is desirable, but I believe that it is a sounder and more beneficial form of competition if it is between stronger systems than if it exists as it does at present.

Mr. SHALLENBERGER. My experience teaches me that when we had real competition between railroads, competition for business, and there were competing lines in a certain territory, that the freight agents of those railroad companies gave us prompter and cheaper service, better service, than we get now, when there is no competition whatever. I wondered if your study of this subject had led you to consider this general proposition, up until the passage of the 1920 act, that all the laws and even this act, provide that the matter of competition must always be considered before the Interstate Commerce Commission shall act, that they shall preserve competition between the corporations; and the laws of the States were very strict in so far as maintaining competition was concerned. Now, since the passage of this act, then following it up with this bill, it looks to me, as a layman, that we are changing the entire policy of the Government so far as the regulation of railroads is concerned. We are abandoning the idea of competition and coming down to the idea of concentrating all the power in the hands of 11 men to be appointed here in Washington, who are responsible to no one but the President who appoints them—I wondered whether or not you would consider the possibility that we may surrender the power that Congress has now to this body of men and not be able to get it back.

Mr. GOODWIN. Mr. Chairman, I am in favor of the Interstate Commerce Commission and the interstate commerce law, but in connection with the gentleman's remarks, I have very forcibly in mind what Senator Cummins said in the original report from his committee on the transportation act of 1920. I do not believe that I should take your time in reading it, but it is the clearest statement I have ever seen of the reasons for and the purpose of consolidation. Waiving aside all these questions of the degree of competition involved in this report Senator Cummins states that consolidation is an absolute necessity for the retention of private ownership of the railroads;

that you can operate the railroads and retain your weaker and smaller lines and continue their operation in one of two ways, either by Government operation, which his committee rejected and which Congress rejected, or by a process of consolidation.

I absolutely accept that reasoning and will go so far as to say that if a consistent policy of consolidation is not carried out, it means either that you have got to face the elimination of the service on your smaller and weaker roads or you will have to resort to Government operation in order to have them operated in the face of their losses and in the face of the fact that money will not invest itself in those lines. That would be my fundamental answer on that point, as going deeper into the question of the degree of the competition.

Mr. SHALLENBERGER. Do you think that the interest of the investor in the corporation is more essential than the interest of the general public in a matter of that kind?

Mr. GOODWIN. Oh, no, I believe that both should be properly preserved. Under the Constitution of the United States, the investor's rights are cared for.

Mr. SHALLENBERGER. The Constitution does not guarantee me, if I invest my money in a corporation, a certain rate of interest on it, does it?

Mr. GOODWIN. Certainly not. It guarantees that you shall not be deprived of your property without due process of law.

Mr. COOPER. Mr. Goodwin, referring to the question which Governor Shallenberger raised about the elimination of competition, suppose that this bill becomes a law and the New York Central and the Erie Railroads which parallel each other almost to Chicago, are consolidated. To a certain extent, that will eliminate competition between those two roads, but yet at the same time, when the question of establishing a rate comes before the commission, I have in mind that before they pass on that, they will look into the question of service that that road is giving. In other words, the commission has the power under a law of this character to regulate the service of the railroad.

Mr. GOODWIN. I agree with you, sir.

The CHAIRMAN. Mr. Goodwin, does it not come down in the final analysis to this point: if you have a plan laid out, eventually you are going to have compulsory consolidation?

Mr. GOODWIN. I can not go so far.

The CHAIRMAN. Suppose you take this as an illustration: You have your plan laid out and state that if it is not accepted within five years or seven or ten, then the commission may act.

Doesn't that eventually lead to compulsory consolidation?

Mr. GOODWIN. Certainly, but I am not discussing the constitutionality of compulsory consolidation.

The CHAIRMAN. I was not referring to that. I was simply stating this: It appears to me that if you had an agreed plan with a time limit within which railroad must consolidate voluntarily in order to take advantage of the plan, after the expiration of that time, you had compulsory consolidation only if it could be brought about from a constitutional standpoint.

Mr. GOODWIN. It seems to me you have either got that or you have got the proposition of the Government taking over and operating certain parts of the railroad system, at any rate.

Mr. BURTNESS. Did the chamber approve the present consolidation provisions of the transportation act?

Mr. GOODWIN. The chamber acted on consolidation prior to the passage of the transportation act and advocated plans for consolidation. It never had occasion to deal with its specific provisions, but fundamentally it approved it. Always the chamber has stood solely for voluntary consolidation.

Mr. BURTNESS. I was wondering whether it approved, not necessarily the details, but whether it approved the plan in the transportation act of the commission arranging what was hoped to be a perfected plan that would be adopted by the carriers.

Mr. GOODWIN. I do not recall ever going into such specific detail as to approving the provisions for a comprehensive plan and then that all consolidation thereafter must be in exact accordance with that plan.

Mr. BURTNESS. Assuming that this bill before us or one substantially similar should be passed, are you hopeful of voluntary consolidations taking place to any appreciable extent?

Mr. GOODWIN. I am.

Mr. BURTNESS. Do you think that within a reasonable number of years there would be consolidations effected to the extent that we would have simply a limited number of systems?

Mr. GOODWIN. Well, I think that the passage of such legislation will facilitate consolidations behind which is not anything that Congress may do, but the economic situation in regard to the roads at present.

That is the urge, and you are simply making possible the carrying out of that urge. As to the rapidity with which it will take place, I have no idea. I simply have faith that if you make it possible with the economic conditions that exist, it is bound to take place.

Mr. BURTNESS. In your opinion, would this result that you look for be limited largely to the consolidation of what we may call strong roads, or are you also hopeful that in the voluntary consolidations effected would be included the weak roads?

Mr. GOODWIN. The latter.

Mr. BURTNESS. On what theory do you entertain that hope?

Mr. GOODWIN. Because of the problem that exists there and because of the control exercised by the Interstate Commerce Commission over these consolidations.

Mr. BURTNESS. That problem is not one that so vitally concerns the strong roads, is it?

Mr. GOODWIN. It vitally concerns the public, the representatives of the public. It vitally concerns all business. They can not possibly see these weaker roads go out of existence and face non-operation.

Mr. BURTNESS. But isn't it true that the agencies that would get busy on these consolidations would generally be the carriers?

Mr. GOODWIN. Yes.

Mr. BURTNESS. I was wondering what inducement there would be for a strong carrier to work very hard upon some plan which would involve bringing into its system one or more of these weaker lines. What would be the urge? I can see the public urge and all that, but what would be the urge upon the carrier which would have the say and whose assistance would be needed? In fact, it would be the agency that would have to proceed in order to even bring the matter before the commission.

Mr. GOODWIN. I thoroughly understand your argument. The selfish interests of the roads will not be in the consolidation of non-paying properties.

Mr. BURTNESS. That is the point exactly.

Mr. GOODWIN. And there will not be that urge except in the attitude of the Congress in passing this bill and in providing very broad plenary powers in the Interstate Commerce Commission to reject any consolidation that is not in the public interest. I hold that amply protects that point, and if the carriers proceeding selfishly may not desire to absorb these weaker roads the question of public interest is paramount when it comes to the question of whether the carrier may or may not absorb.

Mr. BURTNESS. I assume there may be a lot of consolidations effected purely between strong railroads which would not be contrary to the public interest, which would in and of themselves be in the public interest, which might not take in any of the weak roads whatsoever.

Mr. GOODWIN. Even if that is what takes place first, the other problem is one that must be faced later on.

Mr. BURTNESS. I take it the country is interested in the question of consolidation largely because of the problem of the weak roads, not necessarily small roads, but roads which under present conditions seem unable to yield a reasonable return on the property invested. The thing I have in mind is simply the question of how this bill, which is purely a permissive bill—I think if must be permissive, for I do not believe compulsory legislation, would be constitutional, how will purely permissive legislation of this kind in the long run tend to effect consolidations which will not still leave out these weak roads, these small roads, and leave them just as much of a problem as they are to-day.

Mr. GOODWIN. I do not think I can answer you any further. I rely on the public opinion, the interest of the shippers, the Congress of the United States, and the Interstate Commerce Commission, but I am not a prophet as to just how this thing will work out. We will have to see it and in time may need further legislation from your committee.

Mr. BURTNESS. The only provision in the bill that I can see that would tend to put these weak lines into the consolidated systems is that giving the commission the right to propose conditions on the intended consolidation and to say to the proposed merging companies, "We will not permit you to merge unless you take in such and such roads."

Mr. GOODWIN. Exactly; that is what we are looking to.

Mr. BURTNESS. If that should become the policy of the commission when consolidations are proposed, and if that is found by the carriers to be the policy of the commission, then it seems to me that the railroads will not be very much interested in starting negotiations for consolidations; I mean strong railroads; they will probably say, by the time we get before the commission we will have to take in a few cats and dogs around the country, and what is the use?

Mr. GOODWIN. Are you not overlooking the fact of competition? These consolidations are not always confined to the two parties that may wish to consolidate. There may be a third one outside, who will offer more favorable terms as regards the cats and dogs that you speak of, and in a great many cases there will be negotiations in the matter.

Mr. BURTNESS. That might be more effective inducements.

Mr. GOODWIN. There would be negotiations.

Mr. BURTNESS. At any rate, all we can do is to hope that this thing would be brought about in some way, but the people responsible for the consolidation proposition in the present transportation act hoped it would effect consolidations in the interest of the public.

Mr. GOODWIN. It is a step forward in the interest of consolidation.

The CHAIRMAN. If there are no more questions, the committee will stand adjourned until 10 o'clock to-morrow morning.

(Thereupon, at 11.15 o'clock a. m., the committee adjourned to meet again at 10 o'clock a. m., Wednesday, June 9, 1926.)

(In connection with the foregoing statement, Mr. Goodwin filed the following statement on taxes and other governmental fees incidental to the consolidation of railroads: Report of Committee II—Railroad Consolidation, National Transportation Conference, November 6, 1923. Referendum No. 43, March 22, 1924. Special bulletin on Referendum No. 43, June 9, 1924:)

STATEMENT ON TAXES AND OTHER GOVERNMENTAL FEES INCIDENTAL TO THE CONSOLIDATION OF RAILROADS SUBMITTED BY MR. GOODWIN IN RESPONSE TO REQUEST OF THE COMMITTEE 1

This discussion is confined entirely to the question of taxes and fees incidenta to the processes of organization, reorganization, or merging of corporations and to the entrance fees required of foreign corporations for the privilege of carrying on business in a State and has no reference whatever to the usual recurring taxes on corporate property, income or franchises or other levies which are collected yearly by the States or the Federal Government.

Since mergers or other consolidation of existing railway corporations may be accomplished by so many different methods under the laws of so many different States and each of the various possible combinations would present its own peculiar tax and fee question, it is impossible to make any conclusive general statements as to the taxes involved in reorganizations. Comments must necessarily be largely limited to fact statements relative to existing laws and regulations now in force in the Federal and State Governments, the exact amount of taxes or governmental fees attaching to any proposed reorganization being determined by a calculation based on the particular factors involved.

The discussion below considers, first, Federal taxes, and secondly, State taxes and fees.

FEDERAL TAXES

Stamp taxes.—Under provisions of the Federal revenue act which have been in force since 1917, if a corporate organization or consolidation involves the issuing of new securities as most of such transactions inevitably do, then the Federal stamp tax of 5 cents per hundred on the value of all stocks, bonds, or certificates of indebtedness issued would have to be paid.

While the Federal stamp tax appears relatively low, yet, because of the huge capitalization of some of the railway corporations, the total amount of the tax may assume very appreciable proportions. If the Pennsylvania Railroad system were to be consolidated into one coporation at an estimated value of $2,500,000,000 and new securities were issued to cover the entire amount, the Federal stamp tax would equal $1,250,000.

Corporate income tax.—The Federal revenue law provides that reorganization of corporations can be accomplished under certain conditions without subjecting the parties interested to the Federal corporate income tax. A reorganization not subject to taxation is defined as (*a*) a merger or consolidation including the

acquisition by one corporation of at least a majority of the voting stock and at least a majority of the total number of shares of all other classes of stock of another corporation or substantially all the properties of another corporation, or (*b*) a transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor or its stockholders or both are in control of the corporation to which the assets are transferred, or (*c*) a recapitalization, or (*d*) a mere change in identity, form, or place of organization however effected.

If, however, reorganization is accomplished by methods other than those included in the statutory provisions outlined above and especially if the disposition of the assets of a corporation were such as to constitute simply a sale to another corporation, then profits and losses would be recognized under the revenue act and taxes and credits accrue accordingly.

The term "reorganization" as used in the revenue act is highly technical and any attempt to determine the exact dividing line between taxable and nontaxable transactions would require a long detailed discussion. It is perhaps sufficient for present purposes to state that many consolidations and mergers can be effected free of any federal corporation income tax, yet in any proposed reorganization strict attention would have to be given to the provisions of the Federal statute if this tax (now 13½ per cent) is not to be incurred.

STATE TAXES AND FEES

Every corporation must pay the organization or reorganization taxes and fees required by the State under whose laws it is chartered and, in addition, if it does business elsewhere than in the State of its incorporation, it must meet the requirements which the various States exact from foreign corporations for the privilege of doing business within their respective jurisdictions. A large railroad organization, covering as it undoubtedly would numerous States, in case of reorganization would thus be compelled to pay not only the taxes and fees incidental to its incorporation in the State which granted its charter, but would also as a foreign corporation be required to meet the demands of the various other States through which its lines pass. Discussion relative to State organization expenses thus logically divides itself under two general heads, (1) taxes and fees incidental to the organization or reorganization of a domestic corporation in the chartering State, and (2) taxes and fees exacted from foreign corporations for the privilege of doing business within the jurisdictions of the various States.

TAXES AND FEES INCIDENTAL TO CHARTERING OR INCREASING THE CAPITAL STOCK OF DOMESTIC CORPORATIONS

There is attached hereto an exhibit indicating in outline form the taxes and fees incidental to the organization or increasing the capital stock of a domestic corporation in the various States. It should be noted in referring to the exhibit that it contains only general provisions and does not take account of various technicalities and specific exemptions or requirements which are found in some of the State statutes, and which apply only to particular types of corporations or apply only under certain stipulated conditions. To include all these details would require an unwieldy document, but the exhibit will serve as a general guide to the taxes and fees exacted by the different States.

It will be noted that nearly all the States impose an organization tax based on the amount of capital stock authorized. In practically all cases the rate of taxes imposed on an increase in the capital stock of an existing organization is the same as that required of a new corporation.

Pennsylvania has the heaviest organization tax, one-third of 1 per cent on the amount of capital authorized. In 11 other States—Alabama, Arkansas, Connecticut, Indiana, Iowa, Kentucky, Ohio, Oklahoma, Tennessee, Texas, Wisconsin—the basic tax is one-tenth of 1 per cent of the authorized capital stock. In nine other States—Illinois, Kansas, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, New York, North Dakota—the basic rate is one-twentieth of 1 per cent. While the basic rates of these two groups are as indicated, the exact amount of taxes may vary somewhat within the same group due to the fact that there are some variations in the method of computing the tax, but the difference will not be substantial in the case of large corporations. No general statement can be made in regard to the other States, as the methods of computing their taxes vary so widely as to preclude any attempt at classification. In a limited number of the States not enumerated above, the taxes are scarcely more than nominal, while in others they approach the amount collected in those States which have a basic tax of one-twentieth of 1 per cent.

TAXES AND FEES REQUIRED OF FOREIGN CORPORATIONS FOR THE PRIVILEGE OF DOING BUSINESS WITHIN THE RESPECTIVE STATES

According to law and practice in this country, each State regards as foreign every corporation which is not chartered under its own laws. It is also a universal practice for all States to exact from foreign corporations some taxes or fees for the privilege of doing business within the State.

The attached exhibit also includes in outline form the fees and taxes required of foreign corporations for the privilege of carrying on business within each State. The statement previously made likewise applies here, namely, that the exhibit contains only general statements and does not include details and technicalities which are found and which apply only to particular types of corporations or apply only under particular conditions.

There is an evident tendency now for the States to apply to foreign corporations for the privilege of doing business within their respective jurisdictions the same rate of taxes on the capital employed within the State as is required of domestic corporations for organization or reorganization. It will be noted from the exhibit that a considerable number of States, including Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Minnesota, Missouri, Montana, Ohio, Oklahoma, Pennsylvania, Utah, and Wisconsin, have adopted this rule in substance. In nearly all these States the basic rate is either one-tenth or one-twentieth per cent of the amount of capital employed within the State.

A limited number of States, including Colorado, New York, and West Virginia, which determine the entrance tax of foreign corporations by a percentage of capital employed within the State, apply to such corporations higher rates than those attaching to the organization of domestic corporations.

In some States, including Arizona, Connecticut, Kentucky, Maine, Maryland, Massachusetts, Nebraska, New Hampshire, North Dakota, Rhode Island, Vermont, foreign corporations are required to pay only nominal fees for the privilege of doing business within their respective jurisdictions.

In the remainder of the States the method of computing the tax payable by foreign corporations on entering the State vary so widely that no general statements or classifications are possible.

The above discussion has been confined to initial entrance fees required of foreign corporations. The fees required in case a foreign corporation doing business within a State increases its capital stock is also a factor to be considered. In a considerable number of States, including California, Connecticut, Georgia, Kentucky, Massachusetts, Maine, Michigan, Maryland, South Carolina, Nevada, New Hampshire, Nebraska, North Dakota, Oregon, Rhode Island, Vermont, and Wyoming, the fees incidental to the increase of the capital stock of foreign corporations doing business in their respective jurisdictions are merely nominal. In the majority of States, however, fees of this character are computed by substantially the same method as are those for the original entrance of the corporation into the State. For example, if the State levies a tax of one-twentieth per cent on the capital stock employed within the State for original entrance, then any increase in capital stock of such corporation will be taxed on the same basis; or if a State determines the original entrance tax on some other basis than that just indicated, the tax on the increased capital stock would be computed to correspond.

OTHER FEES

In addition to the taxes and fees indicated above, all States levy other incidental fees both on domestic corporations at time of chartering or reorganization and on foreign corporations on their entrance in the State. In many States there is a so-called charter fee of a fixed amount, but quite moderate. There is also frequently a fee for furnishing an official copy of the charter or license for doing business. Not unusually also there is a charge for recording the charter or license with the proper State official and various other incidental fees are found in the different States. None of these incidental fees, however, is heavy, and, while they may sometimes be irritating or annoying, the total amount is not large.

FEES OR TAXES INCIDENTAL TO ANY PARTICULAR CORPORATE REORGANIZATION

As previously stated, it is quite obvious that it is impossible to make any general statement either as to the taxes incidental to the chartering or rechartering of a corporation or the amount of fees necessary to secure permission to operate in States other than that of incorporation. The total amount of taxes depend upon the particular States under whose laws either as a domestic or foreign corporation it is proposed to operate. If, however, the amount of capital is given and the particular States in which the corporation expects to operate are known, then by referring to the attached exhibit a fairly accurate calculation can be made of taxes and fees incidental to any proposed reorganization.

In this connection some concrete illustrations may be of interest. In 1914 there was a partial reorganization of the New York Central system, the authorized capital stock of the consolidated corporation being $300,000,000. It is reported that the following fees incidental to the reorganization were paid: Michigan, $150,000; Ohio, $300,000; Indiana, $300,000; Illinois, 249,590. If this reorganization were to take place now, in addition to State fees there would also be payable a Federal tax of 5 cents per hundred on all new securities issued.

In 1923 a reorganization of the Nickle Plate road was effected, the capital stock of the consolidated corporation being $105,500,000. Incidental to this reorganization it is reported that the following State taxes were paid: Ohio, one-tenth per cent of authorized capital stock, $105,500; Indiana, one-tenth per cent of authorized capital stock, $105,500; Illinois, one-twentieth per cent authorized capital stock, $52,750; total, $263,750.

In 1925 the Pennsylvania Railroad system effected a merger of five of its smaller subsidiaries into one corporation. The authorized capital stock of the consolidated corporation was $31,500,000, and the amount issued was $28,410,000 these figures being equal respectively to the combined authorized and issued stock of the merging corporations and the stock was exchanged at par share for share. Taxes incidental to this reorganization were $31,500 paid to the State of Ohio and $14,200 Federal stamp tax.

The taxes imposed should the Pennsylvania Railroad system be consolidated into one corporation can also be used as an illustration. The assets of the new corporation it is stated would be about $2,500,000,000, and the suggestion is that there be $1,250,000,000 capital stock and $1,250,000,000 bonds. If this corporation were chartered in a State levying one-tenth per cent on the capital stock, the amount payable would be $1,250,000, or if chartered in a State levying one-twentieth per cent on the capital stock, the amount would be $625,000. These figures are for incorporation in one State only. To these would have to be added the incorporation fees of other States, should the company decide to take out a charter in more than one, and also the fees for the privilege of doing business in the numerous States in which the company operates, these fees in many instances being substantially the same as those required for incorporation. In addition, the Federal tax of 5 cents per hundred on all new securities issued would have to be paid and if the entire capital structure were covered by new securities, the Federal tax would equal $1,250,000.

It should be remembered in this connection that the taxes assessed on the merging or reorganization of existing corporations are frequently duplicate taxation. In many cases these same fees have been paid by the original companies at the time they were chartered or entered the State, and yet if consolidated the new corporation must pay taxes based in many instances on the entire capital regardless of what the merging companies may have previously paid.

When the number of States in which any large railroad corporation operates is considered, it is quite obvious that the amount of taxes incidental to securing a new charter or increasing the amount of capital stock in an existing corporation and paying for the privilege of operating in States other than that of incorporation becomes a real burden on the process of consolidation.

EXHIBIT OF FEES AND TAXES INCIDENTAL TO CORPORATE ORGANIZATION, REORGANIZATION,[1] OR DOING BUSINESS WITHIN A STATE

ALABAMA

Domestic corporations.—Organization tax, $1 per thousand of proposed capital; increase in capital stock, same.

Foreign corporations.—Entrance tax on amount of capital employed within the State, $1,000 or less—tax varies; over $1,000, 25 per cent on first hundred, 5 per cent on the next $900, one-tenth of 1 per cent on amounts over $1,000; increase in capital stock, same rate on amount of increased capital employed in the State.

ARIZONA

Domestic corporations.—Organization tax, filing fees only, $25; increase in capital stock, same.

Foreign corporations.—Organization tax, filing fees only, $30; increase in capital stock, same.

ARKANSAS

Domestic corporations.—Organization tax, $25 for first $10,000 or less; one-tenth of 1 per cent on all amounts over $10,000 of authorized capital; increase in capital stock, same.

Foreign corporations.—Privilege fee of $25 on first $10,000 or less. One-tenth of 1 per cent on all amounts over $10,000 is charged on that proportion of the total issued and outstanding capital stock which corresponds to the proportion of tangible property (real and personal) and business in Arkansas, to the entire tangible property (real and personal) and total business of such corporation, both within and without the State; increase in capital stock, same.

CALIFORNIA

Domestic corporations.—Organization tax, $15 on first $25,000 or less authorized capital stock; $25, over $25,000 but not over $75,000; $50, over $75,000 but not over $200,000; $75, over $200,000 but not over $500,000; $100, over $500,000 but not over $1,000,000; $100 plus $50 for every $500,000 or fraction over $1,000,000; increase in capital stock, $5 for every $50,000 or fraction of increase.

Foreign corporations.—Entrance fee $75 and $5 fee for filing designation of agent, increase in capital stock, incidental fees for filing certificate of increase.

COLORADO

Domestic corporations.—Organization tax, $20 on authorized capital stock of $50,000 or less; 20 cents on each $1,000 above $50,000; increase in capital stock, 20 cents per $1,000 or fraction of authorized increase.

Foreign corporations.—Admission tax of $30 on authorized capital of $50,000 or less; over $50,000, 30 cents per $1,000 of capital employed within the State; increase in capital stock, 30 cents per $1,000 amount of increase of authorized capital employed within the State.

CONNECTICUT

Domestic corporations.—Organization tax, $1 on each $1,000 authorized capital stock; increase in capital stock, same.

Foreign corporations.—Annual taxes of $50 only.

DELAWARE

Domestic corporations.—Organization tax, 10 cents per $1,000 authorized capital stock on amounts up to $2,000,000; 5 cents per $1,000 in excess of that sum; increase in capital stock, same.

Foreign corporation.—Initial fee, $10; also retaliatory tax provision; increase in capital stock, same.

[1] This exhibit contains only the general provisions relative to corporate organization or to the fees paid by foreign corporations for the privilege of doing business within the States and does not include various technicalities and specific exemptions or requirements which apply only to particular types of corporations or apply only under certain stipulated conditions.

DISTRICT OF COLUMBIA

Domestic corporations.—Organization tax, 40 cents on each $1,000 of authorized capital stock; increase in capital stock, same, provided authorized capital exceeds $62,500.

Foreign corporations.—No fees.

FLORIDA

Domestic corporations.—Organization tax, $2 on each $1,000 authorized capital stock up to $125,000; 50 cents on each $1,000 from $125,000 to $1,000,000; 25 cents on each $1,000 from $1,000,000 to $2,000,000; 10 cents on each $1,000 in excess of $2,000,000; increase in capital stock—tax computed as above on both increase and original stock and any fees paid prior to increase deducted.

Foreign corporations.—Same as domestic corporations.

GEORGIA

Domestic corporations.—Organization tax, incidental filing fees only; increase in capital stock, same.

Foreign corporations.—Same as domestic corporations.

IDAHO

Domestic corporations.—Organization tax, $10 on $25,000 authorized capital stock or less; $20, $25,000 to $50,000; $40, $50,000 to $100,000; $60, $100,000 to $500,000; $100, $500,000 to $1,000,000; $150, over $1,000,000; increase in capital stock, same on total capitalization less amount already paid for filing original articles of incorporation.

Foreign corporations.—Same as domestic corporations.

ILLINOIS

Domestic corporations.—Organization tax, one-twentieth of 1 per cent of total authorized capital stock; increase of capital stock, same.

Foreign corporations.—License fee of one-twentieth of 1 per cent of authorized capital employed within the State; increase of capital stock, same.

INDIANA

Domestic corporations.—Organization tax, $10 if capital stock is $10,000 or less, one-tenth of 1 per cent if authorized capital stock exceeds $10,000; increase of capital stock, same.

Foreign corporations.—Certificate of authority, $25 for first $10,000 of authorized capital stock, plus one-tenth of 1 per cent of all in excess of $10,000 of capital stock represented by property owned and business transacted within the State, increase in capital stock, $10 for $10,000 or less, plus one-tenth of 1 per cent on all in excess of $10,000 represented by property and business within the State.

IOWA

Domestic corporations.—Organization tax, $25 on $10,000 or less of authorized capital stock, $25 plus $1 for each $1,000 in excess of $10,000; increase in capital stock, $1 for each $1,000 increase.

Foreign corporations.—Entrance fee of $25 on $10,000 or less based on money and property within the State; $25 plus $1 for each $1,000 in excess of $10,000; increase in capital stock, $1 for each $1,000 or fraction employed in Iowa.

KANSAS

Domestic corporations.—Organization tax, one-tenth of 1 per cent on $100,000 or less of authorized capital stock; over $100,000, $100 plus one-twentieth of 1 per cent of the increase; increase in capital stock, same.

Foreign corporations.—Same as above based on issued capital stock invested and used in Kansas.

KENTUCKY

Domestic corporations.—Organization tax, one-tenth of 1 per cent par value of authorized capital stock; increase of capital stock, same.

Foreign corporations.—No initial tax, but $1 is charged for designation of resident agent for service of process.

LOUISIANA

Domestic corporations.—Organization tax, one-twentieth of 1 per cent of total par value of authorized capital stock; increase of capital stock, same.

Foreign corporations.—Entrance tax of one-twentieth of 1 per cent of capital stock employed in Louisiana; increase of capital stock, same on increase employed within the State.

MAINE

Domestic corporations.—Organization tax, $10 on capital stock of $10,000 or less, $50 over $10,000 but not exceeding $500,000, $10 for each $100,000 over $500,000; increase of capital stock, $40 if capital stock does not exceed $500,000; if capital stock exceeds $500,000, $10 for each $100,000 of increase.

Foreign corporations.—Filing fees only.

MARYLAND

Domestic corporations.—Organization tax, 20 cents for every $1,000 of authorized capital stock up to $1,000,000; $150 on every additional $1,000,000 or fraction up to $5,000,000; an additional tax of $20 for each $1,000,000 or fraction over $5,000,000; increase of capital stock, difference between tax on total authorized capital stock including the proposed increase and the tax on the authorized capital stock excluding the increase.

Foreign corporations.—Flat fee of $25 for filing initial report.

MASSACHUSETTS

Domestic corporations.—Organization fee, one-twentieth of 1 per cent on total amount of authorized capital stock; increase in capital stock, same.

Foreign corporations.—Entrance fee of $50; increase of capital stock, $10 for filing certificate.

MICHIGAN

Domestic corporations.—Organization fee, one-half mill on the dollar for each dollar of authorized capital stock; increase in capital stock, same.

Foreign corporations.—Privilege fee of one-half mill on the dollar based on the proportion which property owned and used in Michigan bears to the entire property of the corporation; increase in capital stock, filing fee only.

MINNESOTA

Domestic corporations.—Organization fee, $50 for first $50,000 or less of authorized capital stock, $5 for each additional $10,000 or fraction; increase in capital stock, same.

Foreign corporations.—License fee same as domestic corporations on capital employed within the state; increased in capital stock, $5 for every $10,000 based upon the proportion of the increase used in the State.

MISSISSIPPI

Domestic corporations.—Organization fee, $20 for $5,000 or less authorized capital stock, $2 each $1,000 of fraction above $5,000 to a maximum of $500; increase in capital stock, $2 per $1,000 on increase.

Foreign corporations.—Same as above.

MISSOURI

Domestic corporations.—Organization fee, $50 for first $50,000 or less of capital stock, $5 for each additional $10,000; increase in capital stock, $5 for each $10,000 increase.

Foreign corporations.—Organization tax same as domestic corporations on capital stock employed within the State; increase in capital stock, same as domestic corporations on increase employed in the State.

MONTANA

Domestic corporations.—Organization fee, $1 per $1,000, capital stock up to $100,000; $100 plus 80 cents per $1,000, $100,000 to $250,000; $220 plus 60 cents per $1,000, $250,000 to $500,000; $370 plus 40 cents per $1,000, $500,000 to $1,000,000; over $1,000,000, $570 plus 20 cents per $1,000 over $1,000,000; increase in capital stock, same.

Foreign corporations.—Same as domestic corporations based on proportion of capital stock represented by property and business in Montana; increase in capital stock, same on property and business employed in the State.

NEEBRASKA

Domestic corporations.—Organization fee, $10 on $10,000 or less of authorized capital stock; $20 over $10,000 but not over $25,000; $50 over $25,000 but not over $100,000; $50 plus 50 cents for each $10,000 over $100,000; increase of capital stock, $5 plus 50 cents for each $1,000 increase.

Foreign corporations.—Flat fee only of $50 for filing certificate appointing resident agents in the State.

NEVADA

Domestic corporations.—Organization fee, 10 cents for each $1,000 authorized capital stock not exceeding $1,000,000; 5 cents for each $1,000 over $1,000,000; increase in capital stock, same.

Foreign corporations.—Entrance fee, same as above; increase of capital stock, no tax.

NEW HAMPSHIRE

Domestic corporations.—Organization fee, $10 on $10,000 or less authorized capital stock; $25 over $10,000 but not over $50,000; $100 over $50,000 but not over $250,000; $150 over $250,000 but not over $500,000; $250 over $500,000 but not over $1,000,000; $10 additional tax on each $100,000 above $1,000,000; increase of capital stock, such sum as when added to the fees paid at time of original authorization and prior increase, if any, will make the total fees accord with the foregoing schedule.

Foreign corporations.—Filing fees only.

NEW JERSEY

Domestic corporations.—Organization fee, 20 cents each $1,000 authorized capital stock; increase of capital stock, same.

Foreign corporations.—Entrance fee, same as a New Jersey corporation is required to pay in the home State of the foreign corporation seeking admission, the minimum being $10.

NEW MEXICO

Domestic corporations.—Organization fee, 10 cents on each $1,000 authorized capital stock; increase of capital stock, same.

Foreign corporations.—Entrance fee, $25 on $250,000 or less authorized capital stock; 10 cents per $1,000 over $250,000 but not over $5,000,000; but fee not to exceed $250; $500 over $5,000,000 but not over $10,000,000; $750 over $10,000,000 but not over $20,000,000; $1,000 over $20,000,000 but not over $30,000,000; $1,500 over $30,000,000 but not over $75,000,000; $2,000 over $75,000,000 but not over $100,000,000; all amounts over $100,000,000, $3,000; increase of capital stock, same.

NEW YORK

Domestic corporations.—Organization fee, one-twentieth of 1 per cent par value authorized capital stock; increase of capital stock, same.

Foreign corporations.—Fee of $52 for filing designation of Secretary of State as process agent. License fee of one-eighth of 1 per cent of capital stock employed within the State; increase of capital stock, same as license fee above.

NORTH CAROLINA

Domestic corporations.—Organization fee, $40 on authorized stock on $100,000 or less; $40 plus 40 cents per $1,000 over $100,000; increase of capital stock, 40 cents on each $1,000 authorized increase.

Foreign corporations.—Fee of $25 on total authorized capital stock of $125,000 or less; $25 plus 20 cents for each $1,000 over $125,000 up to $1,250,000; over $1,250,000, $250; increase of capital stock, 20 cents for each $1,000 increase, though total tax on original amount of authorized capital stock plus increase must not exceed $250.

NORTH DAKOTA

Domestic corporations.—Organization tax, $25 for $25,000 or less capital stock, $50 from $25,000 to $50,000; $5 for each additional $10,000; increase in capital stock, $5 for each additional $10,000.

Foreign corporations.—Filing fees only.

OHIO

Domestic corporations.—Organization fee, one-tenth of 1 per cent of authorized capital stock; increase of capital stock, same.

Foreign corporations.—Initial tax of one-tenth of 1 per cent on proportion of authorized capital stock represented by property owned and business transacted in State; increase of capital stock, same.

OKLAHOMA

Domestic corporations.—Organization fee, one-tenth of 1 per cent on authorized capital stock; increase of capital stock, same.

Foreign corporations.—Same rate as domestic corporations on capital stock invested in the State.

OREGON

Domestic corporations.—Organization fee, $10 on $5,000 or less authorized capital stock; $5,000 to $10,000, $15; $10,000 to $25,000, $20; $25,000 to $50,000, $25; $50,000 to $100,000, $35; $100,000 to $250,000, $45; $250,000 to $500,000, $60; $500,000 to $1,000,000, $75; over $1,000,000, $75 for each million or fraction thereof; increase of capital stock: The filing fee is such sum as will make the total amount of filing fees paid by such corporation equal to the organization and license fee required from a corporation of the class indicated by the total capital stock including the increase.

Foreign corporations.—Fee of $50 only; no tax on increase of capital stock.

PENNSYLVANIA

Domestic corporations.—Organization tax, one-third of 1 per cent on authorized capital stock; increase in capital stock, same.

Foreign corporations.—Same as above on capital invested in State.

RHODE ISLAND

Domestic corporations.—Organization tax, 40 cents per $1,000 or fraction on authorized capital stock of $500,000 or less; over $500,000 but not more than $1,000,000, $200 plus 20 cents per $1,000; over $1,000,000, $300 plus 15 cents per $1,000 increase in capital stock, same rate as above on total capitalization including increase, credit being allowed for amount previously paid.

Foreign corporations.—Organization tax, fee of $25 only for carrying on business in the State.

SOUTH CAROLINA

Domestic corporations.—Organization tax, one mill on each $1 of $100,000 or less authorized capital stock; one-half mill on each $1 from $100,000 up to

$1,000,000; one-fourth mill on each $1 in excess of $1,000,000; increase in capital stock, same as upon incorporation, no credit being allowed on amount previously paid.

Foreign corporations.—Entrance fee, $15 on authorized capital stock of $5,000 or less; $5,000 to $100,000, $50; $100,000 to $1,000,000, $300; $300 for the first million plus $10 for each $1,000,000 or fraction thereof; increase in capital stock, filling fee only.

SOUTH DAKOTA

Domestic corporations.—Organization tax, $20 for $25, 00 or less authorized capital stock; $25,000 to $100,000, $30; $100,000 to $500,000, $40; $500,000 to $1,000,000, $60; $1,000,000 to $1,500,000, $80; $1,500,000 to $2,000,000, $100; $2,000,000 to $2,500,000, $120; $2,500,000 to $3,00,000, $140; $3,000,000 to $3,500,000, $160; $3,500,000 to $4,000,000, $180; $4,000,000 to $4,500,000, $200; $4,500,000 to $5,000,000, $220; over $5,000,000, $300; increase in capital stock, tax on entire authorized capital, credit being allowed on any amount previously paid.

Foreign corporations.—Flat tax on $25 and in addition $1 for each $1,000 capital stock in excess of $25,000 employed in the State; increase in capital stock, same rate on increased capital used in State.

TENNESSEE

Domestic corporations.—Organization tax, one-tenth of 1 per cent of authorized capital stock; increase in capital stock, same.

Foreign corporations.—Entrance tax, $50 on authorized capital stock of $50,000 or less; $50,000 to $100,000, $100; $100,000 to $200,000, $150; $200,000 to $300,000, $200; $300,000 to $400,000, $250; $400,000 to $500,000, $300; $500,000 to $750,000, $400; $750,000 to $1,000,000, $500; $1,000,000 to $2,000,000, $750; $2,000,000 to $5,000,000, $1,000; $5,000,000 or over $1,500; increase in capital stock, same rates as above on total authorized capital stock including increase, credit being allowed on amount already paid.

TEXAS

Domestic corporations.—Organization fee, $50 and an additional $10 for each $10,000 authorized capital stock over $10,000; maximum $2,500; increase in capital stock, same.

Foreign corporations.—Same as above.

UTAH

Domestic corporations.—Organization fee, 25 cents on each $1,000 of that proportion of authorized capital stock to be used in State, increase in capital stock, same.

Foreign corporations.—Same as above.

VERMONT

Domestic corporations.—Organization fee, $10 on authorized capital stock of $5,000 or less; $5,000 to $10,000, $25; $10,000 to $50,000, $50; $50,000 to $200,000, $100; $200,000 to $500,000, $200; $500,000 to $1,000,000, $300; $1,000,000 to $2,000,000, $500; $100 for each $1,000,000 in excess of $2,000,000; increase in capital stock, same rate as above on total capitalization, including increase, credit being allowed on amount already paid.

Foreign corporations.—Entrance fee, flat fee of $25 only.

VIRGINIA

Domestic corporations.—Organization fee, $10 for capital stock not over $50,000; 20 cents for each $1,000 over $50,000 and less than $3,000,000; over $3,000,000, $600; tax computed on total authorized capital stock; increase in capital stock, difference between fee already paid and amount payable at above rates on maximum amount of capitalization after the increase.

Foreign corporations.—Entrance fee, $30 on maximum authorized capital stock on $50,000 or less; 60 cents for each $1,000 over $50,000 but not over $1,000,000; over $1,000,000 but not over $10,000,000, $1,000; over $10,000,000 but not over $20,000,000, $1,250; over $20,000,000 but not over $30,000,000, $1,500; over $30,000,000 but not over $40,000,000, $1,750; over $40,000,000 but not over $50,000,000, $2,000; over $50,000,000 but not over $60,000,000, $2,250; over $60,000,000 but not over $70,000,000, $2,500; over $70,000,000 but not over $80,000,000, $2,750; over $80,000,000 but not over $90,000,000, $3,000; over $90,000,000, $5,000. Increase in capital stock, difference between fee already paid and amount payable on maximum amount of capitalization after the increase.

WASHINGTON

Domestic corporations.—Organization fee, $25 on authorized capital stock not exceeding $50,000; over $50,000 to $100,000, $40; $100,000 to $150,000, $75; $150,000 to $200,000, $100; $200,000 to $300,000, $150; $300,000 to $400,000, $200; $400,000 to $500,000, $250; $500,000 to $1,000,000, $500; $1,000,000 to $2,000,000, $750; $10 for each $1,000,000 in excess of $2,000,000; increase in capital stock, difference between fee already paid and amount payable on maximum amount of capitalization after the increase at the above rates.

Foreign corporations.—Same as above.

WEST VIRGINIA

Domestic corporations.—Organization fee, $20 on authorized capital stock of $5,000 or less; $5,000 to $10,000, $30; $10,000 to $25,000, $40; $25,000 to $50,000, $50; $50,000 to $75,000, $80; $75,000 to $100,000, $100; $100,000 to $125,000, $110; $125,000 to $150,000, $120; $150,000 to $175,000, $140; $175,000 to $200,000, $150; $180 plus 20 cents additional on each $1,000 over $200,000 to $1,000,000; $340 plus 15 cents additional on each $1,000 over $1,000,000; increase in capital stock, same.

Foreign corporations.—License tax on amount of capital stock used in State same as domestic corporations, plus 50 per cent of such tax; increase in capital stock, no provision.

WISCONSIN

Domestic corporations.—Organization fee, $25 plus $1 for each $1,000 of authorized capital in excess of $25,000; increase of capital stock, $10 plus $1 for each $1,000 increase.

Foreign corporations.—Filing fee of $25, plus $1 for every $1,000 authorized capital stock employed in the State exceeding $25,000; increase in capital stock, same.

WYOMING

Domestic corporations.—Organization fee, $25 for $50,000 authorized capital stock or less; over $50,000 and not over $100,000, $50; over $100,000, $50 plus 30 cents for each $1,000 in excess of $100,000; increase in capital stock, same.

Foreign corporations.—Fee of $10 plus $1 for each $1,000 of that portion of the capital stock represented by property and assets located and employed within the State; increase in capital stock, $10 incidental fees.

RAILROAD CONSOLIDATION

Report of Special Committee II Appointed by the President of the Chamber of Commerce of the United States

[This report is one of five issued for consideration in advance of a national transportation conference. The reports are: I. Governmental Relations to Railroad Transportation; II. Railroad Consolidation. III. Readjustment of Relative Freight Rate Schedules; IV. Highways and Motor Transport; V. Coordination of Rail and Water Service. There is also a joint subcommittee report on Taxation of Transportation Agencies]

SPECIAL COMMITTEE II

Carl R. Gray, chairman, President Union Pacific Railroad, Omaha.
Henry Bruere, Fourth Vice President Metropolitan Life Insurance Co., New York.
J. A. Carpenter, President Kansas City Paper House, Kansas City.
Clyde Dawson, Dawson & Wright, Denver.

W. N. Doak, Vice President Brotherhood of Railroad Trainmen, Washington
Howard Elliott, Chairman Northern Pacific Railway, New York.
John E. Oldham, Merrill, Oldham & Co., Boston.
H. A. Palmer, Editor Traffic World, Chicago.
Samuel Rea, President Pennsylvania Railroad System, Philadelphia.
G. W. Simmons, Vice President Winchester-Simmons Co., St. Louis.
A. W. Smith, Special Counsel United States Railroad Administration, Washington.
John P. Wallace, General Manager Wallace's Farmer, Des Moines.
Thomas E. Wilson, President Wilson & Co., Chicago.

To the President of the Chamber of Commerce of the United States:

The Chamber of Commerce of the United States has, on different occasions, considered the subject of railroad consolidation. Before the passage of the transportation act of 1920, the chamber submitted to its members a referendum, covering a part of a program for remedial railroad legislation, and in this referendum requested its members to vote on the question of consolidation of railroads in the public interest into a limited number of strong competing systems. Consolidations were to be subject to the approval of governmental authority and all railroad companies engaged in interstate commerce were to be permitted to become Federal corporations. By a strong affirmative vote these propositions were approved by the members of the chamber. Since then the transportation act of 1920 has become the law of the land. It was hoped that, as a result of its passage, over three and one-half years ago, progress would be made toward consolidation of all of the railroads of the country into a limited number of systems; but the necessity for strict compliance with the consolidation provisions of the act and for adjustment to new conditions in the transition period through which the country has been passing have prevented substantial progress. Therefore, this committee was appointed to consider the situation.

The transportation act of 1920 defines the principles to be followed in railroad consolidation and places upon the Interstate Commerce Commission responsibility for preparing a comprehensive plan for the grouping of the roads. During the progress of this work there has been widespread discussion of the entire question which has made clear the need for a review of the advantages to the public that may be expected from further consolidations. The importance of the financial and organization problems that will be involved in the actual working out of consolidations is also evident.

SUMMARY OF FINDINGS AND CONCLUSIONS

The committee's findings and conclusions may be summarized as follows:

1. The transportation act of 1920 was intended to make possible the completion of the normal process of railroad grouping which began more than 70 years ago, but has in recent years been largely suspended through the operation of the antitrust laws and through the restricted returns to the carriers. Some of the consolidation provisions of the act have been so interpreted, however, as to prevent or delay consolidations and thus far little has been accomplished toward reducing the 1,600 or more operating and lessor railroad companies, essential to the existing transportation system.

2. The act protects the public interest by prescribing certain definite principles to govern railroad consolidation on a nation-wide scale and by placing in the Interstate Commerce Commission complete control of the further grouping of railroads. Such grouping is no longer subject to the Federal and State antitrust laws.

3. The provisions of the transportation act require that further consolidations of railroads must be approved by and be in harmony with, a complete plan of consolidation to be adopted by the Interstate Commerce Commission. This plan should be completed as early as practicable and every facility to that end should be afforded the commission if Congress adheres to this condition precedent.

4. The advantages to the public that may be expected from a further systematic grouping of the railroads are those which have, in large part, been obtained by many of the existing systems. They include:

(*a*) Development of a limited number of more uniformly strong and stable railroad systems, thus giving the public better assurance of adequate and efficient service at reasonable rates and fares.

(*b*) Simplified and improved rate regulation made possible through more uniformity in the strength and the traffic characteristics of the several consolidated systems in each rate district, and permitting more ready readjustment in accordance with the economic needs of the various sections of the country and classes of traffic affected. This will not, however, adversely affect the existing rate basing points or the established principles of rate making.

(*c*) Economies in construction, maintanance, and operation which, while sometimes exaggerated, will nevertheless be important.

(*d*) Improved car service with wider movement of cars on their home systems, greatly lessened necessity of car interchange and the utilization of more direct routes, better grades, and shorter hauls.

(*e*) Preservation of competition in rates subject, as at present, to the limitations imposed by Government regulation, and maintenance of competition in service or often the enhancement of competition through rivalry between systems of relatively equal strength.

5. The creation of large consolidated systems will bring up certain management problems, notably, those of assuring appropriate contacts with and attention to the needs of particular localities, the financing of these large consolidations for systematic development and the maintenance of proper cooperative relations with the general body of railroad employees. However, experience in other American industries, as well as in some of the larger existing railroad systems, has demonstrated that there are no conditions inherent in large organizations that prevent them from attaining the standards of efficiency of which small units are capable. These ends may be accomplished (*a*) through decentralization of administrative responsibility as to routine operations and the application of general programs to localities, (*b*) through a highly developed central planning and supervising organization in each system, in close contact with local administrative units, and (*c*) through stimulation of local initiative and responsiveness to local needs.

6. Railroads can be consolidated without injustice to the owners of either the strong or the weak roads and without injustice to the public if the roads are brought together on a fair basis of value and after due consideration of demonstrated earning capacities, property values, and the special conditions surrounding individual properties. The public interest in the financial arrangements will be protected, as prescribed by the act, through the limitation on capitalization, and the provisions to insure reasonable rates and a reasonable investment return.

7. With the removal of legal obstacles and with the change that has taken place in public sentiment it may be expected that railroad consolidation will be continued, provided there is such fair and liberal application of the statutory principles of rate regulation as will promote confidence and initiative in railway administration, and provided the general principles followed in passing on proposed consolidations are in harmony with the line of natural evolution in the grouping of railroads.

8. A full opportunity should be given the carriers to consolidate by voluntary action before Congress considers making railroad consolidation compulsory. Compulsory consolidation involves so many constitutional questions and is such an intricate and involved proposition, that it might hinder, rather than promote consolidations. In any event it should not be resorted to until there has been full opportunity for voluntary consolidation.

9. The proposed consolidated companies should preferably be chartered by the Federal Government thus simplifying regulation and placing all companies on an equality as to corporate powers and responsibilities. It is not, however, necessary to insist upon Federal incorporation of these companies which might be regarded as undesirable by the States or by particular carriers that fear to lose certain valuable rights that they possess under their State charters; but it is desirable for Congress to make it possible for them to secure Federal charters if they desire to do so, by enacting, as soon as possible, a permissive Federal incorporation law. Nevertheless, railroad consolidation should not wait upon the enactment of Federal incorporation legislation either compulsory or permissive. Indeed the States themselves may lead the way by enacting liberal and uniform laws removing the difficulties and costs of consolidating the existing railroad companies.

10. No changes in the consolidation provisions of the transportation act are recommended at the present time, but the experience already obtained in endeavoring to work out consolidations may indicate the need of supplementary legislation in relation to (*a*) joint ownership of lines, (*b*) exchange or re-issue of the securities of existing corporations instead of creating new consoliated corpora-

tions, (c) authority for dealing with minority stockholdings, (d) exemption from taxes on security issues or exchanges involved in consolidations or mergers provided they do not exceed at par the par value of the existing stocks and bonds of the present companies, and (e) the creation of suitable agencies to promote and supervise the working out of consolidations.

By the committee,
CARL R. GRAY, *Chairman.*

WASHINGTON, D. C., *November 6, 1923.*

[The full text of the report follows]

RAILROAD CONSOLIDATION IN THE PAST

The process of forming large railroad systems by the union of smaller railroads started seventy years ago, when in 1853, ten distinct roads connecting Albany and Buffalo were united under one management. In 1869 the Hudson River Railroad was brought into the combination and lines from Buffalo to Chicago were leased. In this way the framework of the New York Central System was built up. Later additions, by acquisition and construction, of scores of competing, connecting and branch lines, have brought the structure to its present proportions. The Pennsylvania Railroad Co., starting in 1846, with a charter to build a railroad from Harrisburg to Pittsburgh with a branch to the Great Lakes at Erie, has gradually brought into a single railroad system the properties and rights of 600 corporations. The number of operating or lessor companies in the Pennsylvania system is still seventy and the process of corporate amalgamation is still in progress. All the existing large railway systems in the United States—the Southern, the St. Paul, the Southern Pacific and others—have grown up both by the construction and the consolidation of lines. This has been the natural, normal process of railroad development.

The building up of large railway systems and the formation of groups of roads under a common control have come about not only by complete consolidation, but also in various other ways ranging from the definite control established by purchase, lease, merger and holding companies to the less direct control resulting from community of interest or financial relations.

The integration of American railroad systems is in harmony with the general tendency to develop large scale business organization and was well advanced before the transportation act of 1920 beame a law. Although there were over 1,600 operating and lessor railroads companies in the United States in 1922, the Class I roads (those having operating revenues of $1,000,000 or more per annum) numbered only 186, besides 14 switching and terminal companies. Moreover the grouping of the 186 Class I carriers was such that 22 systems (or system groups) had nearly 85 per cent of the total operating revenues.

The first step in railroad consolidation would, therefore, appear to require the development of a practical basis whereby these twenty-two systems might merge and absorb their various affiliated, leased and operated railroad companies, and thereby round out their systems and eliminate hundreds of such smaller corporations. This step would need to be carefully safeguarded so as to insure as a final result the proper financing and the efficient operation and management of the large consolidated systems. It is quite possible for a railroad system with reasonable credit to obtain annually $10,000,000 of new capital, but it is quite a different problem to finance successfully large railroad systems each of which would require in the neighborhood of $75,000,000 of capital per annum for improvement, expansion and refunding purposes.

The process of grouping railroads into larger systems has for many years been practically suspended through the influence of the Federal and State anti-trust laws. Experience, however, has brought out forcibly the advantages to the public that would be gained by greater cooperation and consolidation of railroads. Accordingly, when the act of 1920 was passed providing for the return of the railroads to their owners for operation. Congress took a forward step in removing the legal obstacles to consolidation. The purpose of that act was to encourage the carriers to proceed with the consolidations under the supervision and control of the Interstate Commerce Commission, and to carry the process of consolidation to a conclusion, but it has since been found that some of the provisions of that act have been so interpreted as to prevent or delay consolidation, especially the provisions requiring the adoption of consolidation plans for the entire country and the necessity for valuation, recapitalization, etc., and the further provisions which on the one hand permit one carrier to obtain control of other carriers either by lease or purchase of stock, or otherwise, and yet specifically provide that such control must not involve the consolidation of such carriers into a single system for ownership and operation. However, even if the legal conditions had all been favorable, railroad consolidation could hardly have made much headway during the past three years because of the small net earnings received by the railroads. When the carriers are again prosperous, the work of consolidation will be resumed, provided no unnecessary legal or administrative obstacles are encountered. It was not the intention of the framers of the act of 1920 to retard consolidations, but rather to bring to a culmination a movement that has been in progress for several decades.

CONSOLIDATION PROVISIONS OF THE TRANSPORTATION ACT, 1920

The transportation act of 1920 so amends section 5 of the interstate commerce act as to provide for the voluntary consolidation of railroads when and as approved by the Interstate Commerce Commission subject to the following requirements:

"SEC. 5, PAR. 4. The commission shall as soon as practicable prepare and adopt a plan for the consolidation of the railway properties of the continental United States into a limited number of systems. In the division of such railways into such systems under such plan, competition shall be preserved as fully as possible and wherever praticable the existing routes and channels of trade and commerce shall be maintained. Subject to the foregoing requirement, the several systems shall be so arranged that the cost of transportation as between competitive systems and as related to the values of the properties through which the service is rendered shall be the same, so far as practicable, so that these systems can employ uniform rates in the movement of competitive traffic and under efficient management earn substantially the same rate of return upon the value of their respective railway properties."

The law further provides that individual consolidations must be in harmony with the general plan of grouping adopted by the commission, and that the par value of the bonds and outstanding stocks of the corporation which is to become the owner of the consolidated properties "shall not exceed the value of the consolidated properties as determined by the commission." The anti-trust laws, State and Federal, shall not operate to prevent railroad consolidations approved by the commission. The law also provides that, if in the judgment of the commission it will be in the public interest, one carrier may obtain control of another carrier or carriers "either under a lease or by the purchase of stock or in any other manner not involving the consolidation of such carriers into a single system of ownership and operation."

PROGRESS TOWARD CONSOLIDATIONS

The progress made by the Interstate Commerce Commission in carrying out the consolidation provisions of the transportation act has thus far consisted chiefly in tentatively outlining the comprehensive plan and in conducting hearings thereon. The act provides that "when the commission has agreed upon a tentative plan, it shall give the same due publicity, and upon reasonable notice including notice to the governor of each State, shall hear all persons who may file or present objections thereto."

In August, 1921, an order was issued by the commission outlining a tentative plan upon which extensive public hearings have been held, not only in Washington, but in many other cities:—in Mobile, Jacksonville, Atlanta and Columbia on proposed consolidations of railroads in the southeastern territory; in St. Paul, Helena, Seattle, Portland, San Francisco, Los Angeles, Salt Lake City, Denver, Fort Worth, Kansas City, St. Louis, and Chicago, on proposed consolidations in the western territory; in New York, Buffalo and Philadelphia on proposed consolidations in the eastern territory; and in Boston on the relation of the New England lines to the proposed plan; while general hearings on the whole question are scheduled to begin in Washington on November 16. The commission has also held public hearings in New York to determine among other things whether the plans for terminal consolidation proposed by the Port Authority of New York are in harmony with the tentative plan of the commission.

The railroads have prepared, and have submitted at these hearings, elaborate statistical exhibits intended to place in the record a full statement of the facts in regard to operating, traffic, and financial questions that have a bearing on the proposed plan; and representatives of chambers of commerce, trade, and traffic organizations, and municipal and State authorities have appeared at these hearings to present the views of shippers and of local officials.

In response to the notice of the hearings sent by the commission to the governors of the six New England States, these governors in June, 1922, formed a joint New England railroad committee to consider what form of consolidation would be best for the future welfare of New England. This committee, after extensive hearings and study, issued in June, 1923, a report on "Rehabilitation by cooperation—A railroad policy for New England."

As the actual consolidation of the railroads as contemplated by the transportation act must await the definite plan of the commission, this plan should be completed as soon as practicable and every facility to that end should be afforded the commission if Congress adheres to this condition precedent.

ADVANTAGES OF RAILROAD CONSOLIDATION

The advantages to the public that may be expected from a further systematic grouping of the railroads are those which have in large part been obtained by many of the existing systems and may be considered under the following headings:

(*a*) Development of more uniformly strong and stable railroad systems.
(*b*) Simplified and improved rate regulation.
(*c*) Economies in construction, operation, maintenance, and accounting.
(*d*) Improved car service and routing of traffic.
(*e*) Preservation of competition in service.

DEVELOPMENT OF MORE UNIFORMLY STRONG AND STABLE RAILROAD SYSTEMS

One of the most striking facts about American railroads is the wide difference in the financial strength and stability of different railroad companies located in the same general section of the country. Two roads, one financially strong, the other financially weak, may have generally parallel lines which connect the same important traffic centers, and run through productive territory. The relative strength of two such systems may not be determined solely by differences in the cost of performing a unit of service nor by differences in the earnings above operating expenses. The main differences may be financial. The weak road may be weak because its fixed charges, its capital burdens, are heavy compared to the gross and net returns. The strong road may be strong because its capital obligations are relatively light. But whatever the cause, one road is strong and one is weak. The service of each road is essential to the public although not necessarily to the same extent, but in most cases both should be maintained; both must live from the rates they charge; and for similar services like rates must be charged, in spite of the fact that the net results obtained from like rates for both lines may mean sound credit for one road and impaired credit for the other.

Some weak roads are weak because poorly designed and built, or because they are in bad physical condition, and without sufficient traffic. These are mostly either short lines or lines in unproductive territory. These, like the roads with weak financial structure, often lie in the same district with strong roads, and some of them or parts of them should be used advantageously as a part of the country's transportation system. In fact a large mileage of weak roads has already been absorbed by the stronger lines, but low net returns for many years by the larger companies interrupted the process.

The general level of rates is determined neither by the needs of the strong road nor by those of the weak road. Present rates are a theoretical compromise between the two, being designed to yield the strong roads sufficient revenue but giving the weak roads only enough to continue in existence and not enough to increase and improve their facilities or to give the public a progressively better service.

The situation resulting from the presence of financially weak roads among the railroad systems in the United States is of serious import to the public. When the railroad lines were taken over by the Government as a war measure, about 40 per cent of the systems were financially weak. Their fixed charges had become disproportionately large as compared with their net operating revenues. Some of these companies are now in a better condition but many of them are not. The increases in rates and gross revenues have been absorbed by enlarged operating expenses and taxes and the situation as a whole is not greatly improved and can not permanently improve with respect to weak roads without readjustment of their fixed charges as related to their net earnings. This situation must be met by carrying out a policy that will deal effectively with the problem of the

weak roads without impairing the credit of the strong roads. Financial reorganization of the weak roads, or at least many of them, can not be avoided, but it should not be forced until the country has had experience for a few years of the results which each road can obtain under rates that permit the whole railroad investment under fairly normal conditions to earn 5¾ per cent on the total investment. Then the weak roads can be localized, and the strong roads will have demonstrated the extent of their ability to consolidate with the weak lines.

It may be that some weak lines and unprofitable branches of the strong lines should no longer be retained, because of traffic changes and the development of good highways, which offer the means of convenient motor service. The wise course, both for the public and for the carriers, is to bring about, if possible, the financial reorganization and rehabilitation of the weak roads and their incorporation in strong consolidated systems. At the same time the plan should be such that it will not unduly burden the strong roads to enter into the consolidations. Naturally this is not to be accomplished by magic or legerdemain. Two railroad systems of differing financial strength can come together only upon the basis of the relative values of the two properties—actual values as determined mainly by earning capacity. The financially weak road can be, or will be, united with the strong one only by bringing the weak road's capital charges into proper relation to net operating income, and by giving the strong road due credit for its strength; but, this having been done, it is believed, for reasons set forth in this report, that many consolidations will readily take place. Both weak and strong roads will gain by the process.

To bring about railroad consolidations as suggested would be to accomplish the constructive rather than the destructive financial rehabilitation of the weak roads. The largest beneficiary would, however, be the public, which would have greater assurance of adequate and efficient railroad services at reasonable rates and fares. This was well summarized by Mr. Harry A. Wheeler, chairman of the transportation conference held under the auspices of the national chamber in 1918–19, in his address before the House Committee on Interstate and Foreign Commerce. Mr. Wheeler said:

"The grouping or consolidation of the railroads in the United States within a reasonable time, into a limited number, possibly 20 to 30, strong competing systems, is essential; because railroad rates must be the same for similar service whether performed by the weak necessitous railroad, or by the strong and prosperous one. It is in the interest of the public that railroad charges shall be neither so high as to cause the strong roads to profit unduly, nor so low as to force the weak lines, upon which large sections of the country may be vitally dependent, into bankruptcy or into such a permanently enfeebled condition as to prevent them from serving the public adequately and efficiently. All sections of the country ought, in the future, to be served by railroad systems managed by companies strong enough to serve the public with progressive efficiency and economy."

SIMPLIFIED AND IMPROVED RATE REGULATION

The public's chief concern in railroad transportation is to secure adequate and efficient service. The consideration next in importance is that rates and fares shall be reasonable per se and that freight rates shall not unduly discriminate as between persons, places, or commodities.

Consolidation should simplify the problems of rate making and rate adjustment. Rate systems have to be worked out to apply to sections of the country and to the groups of roads serving those sections. There are rate structures and rate adjustments and rate scales of many kinds; but rates are not, and can not be, made to suit the varying requirements or needs of particular railroad systems. Whatever the rate system, structure, scale, or "group" may be, it applies alike to all carriers, weak and strong, in the section which it covers.

The transportation act of 1920 takes cognizance of this and provides that, in planning consolidations, "the several systems shall be so arranged that the cost of transportation as between competitive systems, and as related to the values of the properties through which service is rendered, shall be the same, as far as practicable." When appropriate consolidations have been effected, rates and fares for each of the natural rate-making districts of the country can be more readily fixed so as to yield each of the consolidated railroad systems in such district substantially the same fair return on the value of its property

devoted to the public service. Railroad consolidation and the incidental readjustment of the finances and capital charges of the weak roads should enable the carriers and the Interstate Commerce Commission to maintain in each of the rate-making districts of the country rate levels that are adjusted to the needs of the carriers and that reflect the variations in the general economic characteristics of different parts of the country.

Railroad consolidation, while facilitating rate regulation as affecting the carriers, should not of itself be used to bring about the abandonment of existing rate systems and structures, or the substitution of any new and radical scheme of making and adjusting rates.

Existing rate adjustments have been brought about naturally with the growth of the country. In most instances they are the result of commercial and industrial competition, rather than of railroad rivalry. Broadly speaking, the larger rate structures and the more important rate adjustments are the result of economic conditions that railroad consolidations will not change.

ECONOMIES TO BE EXPECTED FROM RAILROAD CONSOLIDATION

The economies that should result from railroad consolidations, although important, have sometimes been exaggerated and unduly emphasized. It is generally recognized that railroads in the United States are, on the whole, operated as economically and efficiently as are other business enterprises, and that railroad operation in this country compares most favorably with railroad operation in any other country. There is a commendable and increasing cooperation among the railroad companies which are seeking to provide the country as a whole with improved and adequate service. There are, however, certain real and substantial economies to be secured from further railroad consolidation. The following are some of these economies:

(*a*) If the railroads in the United States—the 200 Class I roads and 1,400 short lines and minor roads—were grouped into a reasonable number of systems with sound credit, there would be an undoubted saving in future construction costs as there would be less duplication and greater utilization of facilities. The future transportation requirements of the country could be met by a smaller total investment of capital.

(*b*) Terminal expenses could be lowered at many places, by reducing the number of in-city terminals, and by making larger use of mechanical appliances for handling of consolidated traffic. The future development of railroad terminals in large cities could be planned to give more systematic and economical operation.

(*c*) Shop costs, for both the construction and the maintenance of equipment, should be less for a limited number of railroad systems than for the present number. While many of the smaller roads do not have shops, all the larger lines have their own. This involves much duplication of plants that could be minimized by a reduction in the number of railroad systems.

(*d*) Interline and intercorporate account and ticketing of passengers could be reduced and simplified.

(*e*) Materials and supplies could be contracted for in larger quantities and at lower prices.

IMPROVED CAR SERVICE AND ROUTING OF TRAFFIC

Railroad consolidation should be beneficial and economical as regards the supply, interchange, standardization and maintenance of equipment. Cars will be at home over all parts of a wide system, there will be less necessity for the interchange of cars among railroad systems, and the possibility of the equalization of car interchange will be increased. The practice that some necessitous roads now have of minimizing the purchase of cars and of making the maximum possible use of cars belonging to other companies can be dealt with more effectively.

While the shippers have the legal power to direct the routing of their traffic, railroad consolidations will also doubtless result in the use of more direct routes, better grades and shorter hauls.

PRESERVATION OF PROPERLY REGULATED COMPETITION IN SERVICE

Further railroad consolidations can be accomplished without depriving the public of the benefits of inter-railway competition. The competition in rates will be subject to the same limitations as it now is. Rates have long been regulated

by public authority, but the levels of rates applying by rival routes, by rival ports, or to the markets reached by goods from rival centers of production, are influenced by the competitive forces that still have a large place in the economic life of this country. This will not be changed by reducing the number of railway systems.

The same will be true as regards the more definite and more easily discernible competition in service. That will continue. Indeed when consolidations have been effected, the competition between railroads, both as concerns rate levels applying by rival routes and gateways, and as regards service, may be more effective than at present, and will certainly be quite as beneficial to the public. Inter-railway competition will then be the rivalry of systems of comperatively equal strength. The forces of competition will play their noraml role, stimulating management to its best endeavor to give good service at reasonable rates.

MANAGEMENT PHASES OF RAILROAD CONSOLIDATION

The question has been raised at times whether the proposed consolidation of railroads might not present serious administrative difficulties. It has been suggested, for example, that some of the proposed systems would be too large for a single executive staff to operate with appropriate attention to the requirements of localities, and that the magnifying of existing systems might militate against cooperative relations between the managements and the general body of their employees.

The experience in American industry has deminstrated that there are no conditions inherent in large organizations which make it impracticable for them to attain standards of efficiency of which small units are capable. On the contrary, there appear to be a number of advantages which are held by the large units.

Some of the larger existing railway systems would fairly represent the type of organization which would result from the contemplated consolidations. They have found it feasible to give good service to widely scattered territory of diverse interests and have established methods of administration by which they effectively surmount the difficulties of large scale operation. Their experience and practice would be available for the guidance of new large systems.

The great expansion of certain industrial and public service companies and the success with which they have solved their problem of management, indicated that it would be instructive to make a brief study of several of the larger organizations to ascertain what fundamental principles of management are observed by them.

Organization and management methods in these companies differ by virtue of their distinct problems, but in general it may be said that they have found the following practices fundamental in maintaining a flexible and efficient organization.

1. There is a decentralization of administrative responsibility in respect of (*a*) routine operations and (*b*) the application of general programs to different localities. This is accomplished either through maintaining separate regional and administrative organizations of the component units of the consolidated system, or by State, city, district or other territorial administrative organization.

2. There is in each case a highly developed central executive planning and supervising organization which, through appropriate means, maintanss close contact with the operation of all administrative units. The central organization consists either of an assemblage of operating heads of individual units plus a staff of technical officials who have general supervision over the methods of administration with no responsibility for the detail operations; or the central organization is a body of expert advisors and counsellors to the individual operating units.

3. In each of the companies studied, the danger of lack of local initiative and responsiveness to local needs apprehended with respect to railroad consolidation has been avoided (1) by forcing on each local organization complete responsibility (*a*) for working out its own salvation, (*b*) for maintaining standards of practice established by the supervising executives, and by the process of constructive headquarters assistance to local officers in working out their problems. Instead of maintaining a control over operations, through the exercise of autocratic powers, the headquarters organization maintains this control through the use of facts obtained by statistical and advisory services and by establishing with the cooperation of the operating units, programs of activity upon which all are agreed and which are framed in contemplation of the respective needs and business opportunities of the different units.

For example, some of these companies have complete statistical and accounting knowledge of all the operations of their subsidiary companies or of their regional and divisional districts. They are able at all times to intervene where failures in service arise. They are able to devise and direct operating programs which give appropriate weight to sectional requirements and are always informed of the success with which local organizations are fulfilling the expectations of such plans and programs. In each instance the central organization undertakes to represent the entire corporation in its public relations, and as a corrollary to the general public relations policy, active local contracts, are maintained by all subsidiary units.

First, uniform policy; second, centrai accounting control; third, local initiative, and fourth, the measuring of the results of operations on the basis of fact, are the principles which the successful great corporations employ in order to maintain efficiency and initiative in their organizations. In each case there is, in addition, a definite and enlightened policy established in respect of the appointment of experienced officers and in respect of employee relations and this policy has at the same time an important beraring on the relations of the companies to the public.

A brief study of the general administrative principles of these companies confirms the belief that the mere enlargement of the railroad corporations will not produce inefficiency or a lack of flexible service. Facts rightly assembled, rightly interpreted, and rightly used are the means of maintaining the spirit of enterprise and the standards of service throughout an entire organization, even if its scope is countrywide.

In view of the foregoing, effective railroad consolidation will involve:

1. Distribution and decentralization of responsibility.
2. Centralization of planning and executive supervision.
3. Provision of means of obtaining facts and information on which judgment can be based both by supervising central offices and field executives.
4. Establishment of financial and operating policies with budgets of improvements, revenues, expenses, and administrative activity as a means of giving balanced attention to the needs of different localities and different units of the organization.
5. Development of systematic attention to personnel, or employer and employee relationships and of participation in ownership of stocks and bonds by officers and employees.
6. Provision of a method which will be system wide of discharging the responsibility of the corporation in respect of its public relations and cultivating and developing cooperative contacts with local organizations and communities.
7. Enforcing an ideal of standard service which shall motivate the entire organization, keep it quick and responsive to public need, prevent officialism and serve as a means of inspiring loyalty and esprit de corps throughout the entire rank and file.

Then the mere size of the system will take care of itself.

The methods of organization and management developed by the existing greater railroad systems and by leading industrial and commercial companies should be made available in greater detail than is possible in this report, for consideration and use, when the proposed consolidation of railways takes place.

FINANCIAL PHASES OF RAILROAD CONSOLIDATION

The purpose and method of the proposed consolidation of railroads seem to have been misunderstood by many persons. The mistaken supposition is frequently made that the weak roads are somehow to be saddled upon, or are to be carried by, the strong roads, that the weak roads are to be treated as objects of charity and are to be assisted by the more fortunate members of the railroad family. If this were the aim sought by railroad consolidations, there would be little hope of attaining it. Nor would the aim be a justifiable one. The fact set forth in this report requires the fullest emphasis: The weak and the strong roads are to unite upon a common footing—that of their actual respective values. There must be no coddling of the weak roads, and no sapping of the financial strength of the strong ones.

Another mistaken idea frequently expressed is that the public is in some manner to be made to carry the financial load that now burdens the weak roads. There are no magical means of making a financially weak road strong except to bring its fixed charges and other obligations into a sound relationship to net income. Financial readjustment and recapitalization upon the basis of earning capacity is one of the essential conditions of railroad consolidation.

VALUATION AS RELATED TO CONSOLIDATION

The act of 1920, in the section quoted earlier in this report, provides that "the several (consolidated) systems shall be so arranged (in the grouping of the roads) that the cost of transportation as between competitive systems and as related to the values of the properties through which the service is rendered shall be the same, as far as practicable." The statute also stipulates that "the bonds at par of the corporation which is to become the owner of the consolidated properties, together with the outstanding capital stock at par of such corporation, shall not exceed the value of the consolidated properties as determined by the (Interstate Commerce) Commission."

It is clear that the commission can not authorize a railroad consolidation nor pass upon the securities proposed to be issued by the company that becomes the owner of the consolidated properties without consideration of the values of the several properties that are to be consolidated. This does not compel the commission to refuse to authorize particular mergers until the values of the properties have been determined in accordance with the provisions of the valuation act of 1913. The completion of the valuation will, however, facilitate railroad consolidations to the extent of making it easier for the commission to decide whether the terms and conditions of any particular application for permission to consolidate several roads are in harmony with the law.

FINANCIAL PROBLEMS IN CONSOLIDATION

The facts thus far presented in this report are, it is believed, sufficient to show that railroad consolidations, are desirable and would, if accomplished, benefit the public without burdening the strong roads. It remains to consider the financial practicability of railroad consolidations. Will the financial questions involved prevent the carrying out of the grouping of the railroads in the United States into a limited number of systems?

Consolidation of railroads will not work injustice to their present owners, if two conditions are fulfilled:

(*a*) If, in putting the roads together, proper consideration is given to demonstrated earning capacities on a fair basis of rates and to property values; and

(*b*) If the roads when consolidated shall be assured of a fair return upon their value in accordance with the principles of rate regulation established by existing law.

It needs no argument to prove that a railroad property with capitalization and fixed charges out of proportion to its earnings has no greater value to offer upon entering a consolidation than has another railroad with similar net earnings and physical value but with a conservative capitalization and with capital charges that are readily met from net earnings. However, wide differences in the capitalization of two railroads does not prevent their being consolidated upon the basis of their actual values.

If the factors of net earnings and physical values are taken to determine the values of consolidated railroads, and due consideration is also given to such special circumstances as may obtain in exceptional cases, consolidations can be effected in such a manner as to protect the equitable interests of all the roads and to avoid imposing burdens upon any of them.

VOLUNTARY OR COMPULSORY CONSOLIDATION

A full opportunity should be given the carriers to consolidate by voluntary action before Congress considers making railroad consolidation compulsory. Compulsory consolidation involves so many constitutional questions, and is such an intricate and involved proposition, that it should not be resorted to, in any event, until full opportunity for voluntary consolidation has been given.

A large measure of railroad consolidation has in the past been achieved by the voluntary action of the carriers. The full development of this process was, however, retarded by antitrust laws and other legal obstacles placed in the way of consolidations by the State and Federal Governments. Until the advantages derivable from railroad coordination and from a reduction in the number of railroad operating units were discovered during the stress of the war period, the public generally was opposed to railroad consolidation. It was apprehensive lest the consolidations might establish oppressive monopolies. The effectiveness of Government regulation has now removed this apprehension from the public

99790—26——16

mind; and the laws against railroad consolidations have been supplanted by laws favoring them, but they have not yet gone far enough. With the removal of the legal obstacles, and with the change that has taken place in public sentiment, railroad consolidation may be expected to become active again, provided there is such fair and liberal application of the statutory principle of rate regulation as will inspire confidence and initiative in railway administration, and provided the general plan of consolidation is in harmony with the line of natural evolution in the grouping of railroads.

Compulsory consolidation, if required by law at the present time, might possibly hinder, rather than hasten, the working out of consolidations. A compulsory law enacted by Congress would presumably require the railroads to unite in specified groups or consolidations within a fixed time, and would stipulate that if the railroads failed so to group themselves by voluntary action, they would be condemned, acquired by the Government and sold to the corporations selected for the ownership and operation of the limited number of permanent railroad systems that the Government might think wise to establish and perpetuate. If such a law were enacted, many railroad companies might wait to be condemned and taken over by the Government, trusting thereby to receive for their properties a higher price than they could obtain by private sale, or by voluntary consolidation. Such compulsory consolidation would place a financial burden on the Government of such magnitude, that in view of present war burdens and high taxation to meet them, years might elapse before the process could be completed. It also opens up questions of political expediency as to State taxation, efficiency, and other results that the country should not be required to face at present. It opens up such question of fair dealing and prices to be paid to the owners, who constitute a wide circle of citizens and institutions, that no final settlement of the transportation problem would be possible for years.

FEDERAL INCORPORATION OF RAILROADS

If railroad consolidation is worked out as anticipated, the railroads in the United States will, wholly or for the most part, by owned and operated by corporations as large as, or larger than, those that control the largest existing systems. Historical reasons account for the fact that the present great interstate railroad systems in the United States are owned by corporations chartered by the States. It is, however, logical that these great interstate corporations, and particularly the equally large or the larger corporations that may come into existence in the process of effecting the consolidation of railroads, should be created by, and should hold corporate allegiance to, the Federal Government instead of the States. Public regulation would be simiplified and the public would benefit thereby.

It is recognized that there is much opposition to the Federal incorporation of railroads. The States do not wish to be deprived of the power to create railroad companies and regulate their corporate affairs. They also wish to safeguard their powers of taxation. The change of the railroad companies from State to Federal corporations would very considerably lessen the present prerogatives of the States and it is but natural that the States should not favor the change.

To insist upon the Federal incorporation of the companies that are to own and operate the consolidated railroad systems of the future would delay the contemplated grouping of railroads. The enactment of a law requiring this would be opposed by some elements of the public, and might be opposed by some carriers. Furthermore, if such a law were enacted, some important existing railroad companies might decide against consolidating with other companies for the reason that by so doing they might lose valuable rights enjoyed under their State charters. A law making possible the voluntary Federal incorporation of railroads would meet with much less opposition than a compulsory law would encounter.

It is, therefore, suggested that Congress enact a permissive federal incorporation law by which it would be possible for an existing railroad company, or one that may come into existence in the future, to secure its letters patent from the United States Government. Railroad companies engaged in interstate commerce should at least have the option of becoming Federal corporations. A uniform Federal charter would be of advantage in placing all of the consolidated companies upon an equality as to corporate powers and corporate responsibility. Nevertheless, railroad consolidation should not wait upon the enactment of Federal incorporation legislation, either compulsory or permissive.

FUTURE SUPPLEMENTARY LEGISLATION

The transportation act of 1920 is a constructive piece of legislation intended to furnish the public with adequate transportation. Consolidation as a general principle will be most helpful in developing railroad systems comparatively equal in strength and in ability to render service to the public. Nevertheless, it must be kept in mind that while consolidations will be most helpful, they can not produce an adequate railsystem unless the general adjustment of rates is on such a level as to yield net income sufficient to pay a fair return on the value of property devoted to the public service, and also sufficient to establish the credit by which the railroads can obtain new capital for necessary improvements and extensions of the present transportation plant.

No changes in the consolidation provisions of the Transportation Act have been suggested in this report, but it is possible that experience in working out consolidations will indicate the need of supplementary legislation. It may, for example, be found desirable to permit joint ownership of certain lines or terminals by two or more of the consolidated systems. Furthermore, instead of requiring, in each instance, the creation of a new consolidated corporation, and exchange or reissue of the securities of the existing corporations, it may be wiser to permit any of the large existing systems to purchase the physical properties of any railroad company if approved by the Interstate Commerce Commission, or to exchange their own securities for those of the roads to be acquired and thereby have the smaller railroad companies absorbed by and merged into the existing systems.

It will doubtless also be necessary to provide some method of dealing fairly with minority stockholders so that plans approved by the Commission and assented to by a majority of the owners can not be blocked by a minority interest. Again on account of the heavy taxes which would ordinarily be levied on such mergers, special provisions of law may be necessary to relieve consolidations of this burden.

Furthermore, in cases where new systems are to be created, appropriate agencies will be needed to supervise and promote the actual accomplishment of the consolidations. Presumably the Commission will require within its own organization a special bureau to supervise the work; and it would seem desirable that an organization committee be created for each of the proposed consolidated systems to assist in bringing about agreement upon the values of the several parts of the system to be formed, the ratios of the securities to be exchanged and the many other details involved in bringing the several companies into one organization. Such additional authorization and such agencies as are required for these purposes should be provided for by appropriate legislation.

Such liberalized policy dealing with railroads as has been outlined in this report is dictated from a sense of their great public value, as instruments for preserving National prosperity, and as an assurance to the public from whom large amounts of new capital will be required for railroad enterprises, that their present and future railroad investments are sustained by equitable laws and enlightened Governmental policy.

REFERENDUM NO. 43 ON THE REPORT OF THE SPECIAL COMMITTEE ON TRANSPORTATION

WASHINGTON, D. C., *March 22, 1924.*

BY-LAWS

ARTICLE XIII. SUBMISSION OF QUESTIONS

SECTION 1. All subjects considered or acted upon by this chamber shall be national in character, timely, in importance, and general in application to business and industry.

SEC. 2. All propositions, resolutions, or questions, except those which involve points of order or matters of personal privilege, shall be submitted for action in writing only by the organization members, or by the national council, or by the board of directors: *Provided*, That by consent of two-thirds of the delegates present at a meeting a subject not so presented may be considered.

SEC. 3. When an organization member desires to present a subject for the consideration of this chamber it shall commit its proposals to writing in the form

of a resolution duly adopted by said organization or its governing body and forward it to the secretary.

It shall be the duty of the secretary to bring this subject before the board of directors by mail, or at its first meeting, whereupon the directors shall decide whether or not the subject is of national character, timely in importance, and general in application to business and industry. If the board of directors decides that a subject submitted by an organization member is not of national character, timely in importance, and general in application to business and industry, and should not therefore be submitted to the membership for consideration, the proposing member may appeal from the decision of the board to the national council at any meeting of that body or by mail through the office of the secretary. If the national council decides by a majority vote that the subject should be referred to the membership it shall be incumbent on the board of directors to order its submission.

SEC. 4. If the eligibility of the subject has been determined the board of directors shall decide whether the subject shall be submitted for consideration by the chamber in annual or special meeting or by referendum.

SEC. 5. *Referendum.*—A subject to be submitted to referendum shall as soon as practicable be referred to a committee for report. If the report when received is in proper and adequate form for submission to the membership, the board of directors shall order it to be incorporated in a referendum pamphlet without committing itself in favor or against any of its recommendations, but if not in proper and adequate form it shall refer it back to the committee or appoint a new committee to report on the subject.

SEC. 6. The referendum pamphlet shall contain, in addition to the report itself, a brief of the major arguments against the recommendations of the committee and such other matter as the board may deem advisable. If the subject has been submitted by a member organization, said organization shall have the privilege of incorporating in the pamphlet a brief of such length as the board may determine. The pamphlet shall also contain a ballot upon which the member organizations may register their votes respecting the questions submitted.

SEC. 7. The pamphlet in the form in which it is approved by the board shall be transmitted to each member of the chamber in good standing and simultaneously the secretary shall mail a copy to the national councilor representing each organization member.

SEC. 8. The pamphlet shall be accompanied by a notice from the secretary that each organization member is expected to register its vote on the ballot in writing and mail said ballot to reach the national headquarters within 45 days from the date of issuance of the pamphlet. Each organization may cast one such vote for each delegate to which it is entitled in the annual meeting. [An organization having 25 members or less is entitled to 1 delegate, and for each 200 additional members in excess of 25, 1 additional delegate, but no organization is entitled to more than 10 delegates.] No vote shall be valid unless received by the secretary within 45 days of the date of the mailing of the pamphlet. In connection with its vote each organization member may file such explanation, comment, or opinion as it may desire.

In forwarding the pamphlet it shall be the duty of the secretary to advise each organization member of the date on which the right to register votes expires.

SEC. 9. If before the expiration of 45 days from the date the pamphlet was sent out votes representing more than two-thirds of the voting strength of the organization membership are registered in favor of the propositions submitted or any of them, the secretary shall immediately certify that fact to the board of directors. Thereupon, the propositions so approved shall be recorded as having been adopted by the chamber and it shall be the duty of the board of directors to take such steps as may be necessary to make effective the action taken.

If at the expiration of 45 days one-third of the voting strength of the chamber has been recorded and two-thirds of the vote thus cast representing at least 20 States is in favor of the propositions submitted or any of them, the secretary shall so certify to the board of directors. Thereupon the proposition so approved shall be recorded as having been adopted by the chamber and it shall be the duty of the board to make effective the action taken.

SEC. 10. On a question submitted to referendum no organization member found to have voted with the minority shall be deemed to impair its standing in this chamber by adhering to its position or by continuing its efforts in support thereof.

SEC. 11. Upon approval by the council or board of directors a member may be permitted by petition to place upon the program for consideration at the annual meeting a question which has not been submitted in advance by mail as hereinbefore provided for, but such a question shall not be considered if one-third of the

delegates present object thereto, and its submission by mail as hereinbefore provided for shall be ordered on the recording of a two-thirds vote in favor of that method of procedure.

SEC. 12. *Action at meeting.* (*a*) On all questions before a meeting of this chamber on which a vote is taken viva voce, or by division, each duly accredited delegate from an organization member shall be entitled to one vote in person. A yea-and-nay vote may be ordered on any question upon demand of one-fourth of the delegates present officially representing such organization members and on such ballot only the votes of said members shall be counted. On all yea-and-nay votes each organization member shall be entitled to as many votes as there are delegates present representing said member, subject to the provisions of Article VI, section 3. All yea-and-nay votes shall be fully recorded and published in the proceedings. An affirmative vote of two-thirds shall be necessary to carry the approval of the Chamber of Commerce of the United States of America upon any proposition or resolution which may appear upon the official program or be added thereto as provided for by these by-laws: *Provided*, That such a vote shall be void and of no effect unless the attendance registered at the meeting shall represent one-third of the voting strength of the chamber from at least 20 States.

(*b*) The list of questions to be considered at each annual meeting shall be mailed to each member at least 30 days in advance of such meeting.

(*c*) No question shall be received from an organization member for submission to the chamber at the annual meeting within 40 days of the date of said annual meeting, except in case of emergency and unless by a two-thirds vote of the board of directors.

BALLOT

(To be detached)

No. ----------

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA,
Washington, D. C., March 22, 1924.

To the SECRETARY:

Your organization, as a member of the Chamber of Commerce of the United States of America, is requested to register its vote upon the questions submitted herewith on this ballot, which is to be detached and sent by registered mail at the earliest date practicable to the Secretary at the National Headquarters, Mills Building, Washington, D. C.

This referendum is taken for the instruction and guidance of the board of directors in its action upon the questions presented.

By order of the Board of Directors.

ELLIOT H. GOODWIN,
Resident Vice President.

This ballot will be counted only if received at national headquarters, Mills Building, Washington, D. C., on or before May 6, 1924. (See by-laws, Article XIII, on inside of cover.)

----------, *1924.*

TO THE SECRETARY OF COMMERCE OF THE UNITED STATES OF AMERICA,
Mills Building, Washington, D. C.

SIR: The ----------
(Name of organization)
is a member in good standing in the Chamber of Commerce of the United States of America, and having a total membership of ---------- is entitled to ------ votes. It desires these votes to be recorded as noted below:

1. The committee recommends that the national transportation policy should aim at development and maintenance of an adequate system of rail, water, and highway transportation with full cooperative service of all agencies that will contribute to economy and efficiency. (See pp. 4 and 5.)

	IN FAVOR
	OPPOSED

2. The committee recommends that the important principles of the transportation act of 1920 should be continued without change until there has been further experience. (See pp. 8 and 9.)

	IN FAVOR
	OPPOSED

3. The committee recommends that the principle of recapture of a fair proportion of excess railroad earnings should be maintained in the public interest as essential to the rule of rate making. (See pp. 12 and 13.)

	IN FAVOR
	OPPOSED

4. The committee recommends supplementary legislation in harmony with the general principles of the transportation act to facilitate consolidations by voluntary action subject to the approval of the Interstate State Commerce Commission. (See pp. 14 and 15.)

	IN FAVOR
	OPPOSED

5. The committee recommends that the policy of connecting and coordinating terminal facilities, with provisions for joint use prescribed by the Interstate Commerce Commission, be applied as rapidly as practicable. (See pp. 20 and 21.)

	IN FAVOR
	OPPOSED

6. The committee recommends that, in place of any attempt to deal with rates and other problems of regulation of common carriers through legislation—necessarily inelastic—such problems be handled by properly constituted Federal and State administrative agencies. (See pp. 22 and 23.)

	IN FAVOR
	OPPOSED

7. The committee recommends that instead of any attempt at general reduction at the present time the existing administrative agencies, under their established methods and with all possible dispatch consistent with proper study and investigation, proceed with readjustment of relative freight rates. (See pp. 24 and 25.)

	IN FAVOR
	OPPOSED

8. The committee recommends that Congress should direct the Army engineers to make a comprehensive survey and present a definite plan and schedule of priorities for waterway development. (See pp. 28 and 29.)

	IN FAVOR
	OPPOSED

9. The committee recommends that, to determine more fully the possibilities of inland waterway transport under private operation and thus enable the Government the sooner to dispose of the lines, the Secretary of War be given authority and funds to continue operation of the barge lines on the Mississippi and Warrior Rivers in accordance with good commercial practice. (See pp. 30 and 31.)

	IN FAVOR
	OPPOSED

10. The committee recommends that waterways service, including through rail-and-water routes and rates with suitable divisions of rates between the two types of carrier, be facilitated by public and private agencies wherever economically warranted and in the public interest. (See pp. 32 and 33.)

	IN FAVOR
	OPPOSED

11. The committee recommends that optional store-door collection and delivery with reasonable and separately itemized trucking charges in the published tariffs be established as rapidly as practicable by agreement between carriers and shippers, beginning at the centers of greatest congestion. (See pp. 38 and 39.)

	IN FAVOR
	OPPOSED

12. The committee recommends that wherever experience indicates that it will be in the public interest, regulatory bodies should facilitate the utilization of motor transport to replace uneconomical forms of rail service, to relieve yard and terminal congestion, and to extend existing steam and electric railway services. (See pp. 40 and 41.)

	IN FAVOR
	OPPOSED

13. The committee recommends that the rates and services of motor common carriers, both freight and passenger, should be subject to regulation by the State and Federal commissions which have jurisdiction over the operation of other common carriers having particularly in view insuring to the public adequate, economical, and continuous service. (See pp. 42 and 43.)

	IN FAVOR
	OPPOSED

14. The committee recommends that in addition to bearing an equitable share of the general taxburden, the road users should pay the entire cost of maintenance. of highways through special taxes levied against them, such special taxes being applied exclusively to that purpose. (See pp. 44 and 45.)

	IN FAVOR
	OPPOSED

Attest:

Signature of president or secretary

INSTRUCTIONS TO MEMBERS

The board of directors of the Chamber of Commerce of the United States has adopted the following instructions for members, and directed they be printed in connection with the ballot.

1. Each organization member in good standing may cast one vote for each delegate to which it is entitled in the annual meeting.
2. The ballot shall be marked by entering a cross or the number of votes to which the organization member is entitled in the square at the left of the words "In favor" if the recommendation is favored, or at the left of the word "Opposed" if the recommendation is opposed.
3. If the organization member desires to have its vote recorded as divided it may do so by entering the vote to which it is entitled in the squares to the left of the words "In favor" and "Opposed" in such proportion as it sees fit. The total vote in the two squares must not exceed the total number of votes to which the organization member is entitled.
4. Fractional votes less than one-half shall not be entered. If so entered they shall on the canvass be carried to the nearest whole number.
5. The ballots which are so marked as to be clearly intelligible shall be counted. Where the sum of the numbers entered in the squares exceeds the total number of votes to which an organization member is entitled, canvassers shall in no case attempt to divide the votes but shall enter them as "In favor" or "Opposed" in accordance with the majority vote shown on the ballot.

EXPLANATION

The board of directors in authorizing submission of a report to referendum neither approves the report nor dissents from it. In order to inform the members as fully as practicable on the subject submitted to referendum a carefully selected committee is appointed to analyze each question and report its conclusions. The purpose of the referendum is to ascertain the opinion of the commercial organizations of the country, not to secure the approval of the recommendations voiced in the report. Only the vote of the member organizations can commit the Chamber of Commerce of the United States for or against any of the recommendations submitted by the committee and until such vote is taken the report rests solely upon the authority of those who have signed it.

STATEMENT OF QUESTION

The Chamber of Commerce of the United States has given continuous attention to the problems of transportation, thus giving evidence of the great importance it and the organizations in its membership attach to the transportation services at the disposal of the country. So far as railroads are concerned, the earlier attention of the chamber culminated in a conference of different interests and in a subsequent referendum which dealt with remedial railroad legislation and was completed in the summer of 1919. This referendum established the policies of the national chamber with respect to questions which are of the utmost importance and with which the subsequent enactment of Congress, in the transportation act of 1920, dealt extensively.

Since the referendum of 1919, questions of railroad transportation, questions respecting the development and use of waterways, and questions respecting improvement and utilization of highways have had a prominent place in the discussions and declarations of the chamber's annual meetings. As a result of this continued consideration of the whole transportation situation, the board of directors toward the end of 1922 authorized the president of the chamber to invite leaders in the transportation field to a conference. When the president of the chamber acted upon this authority, the studies of the conference were apportioned among five committees. The subjects before these committees were: Governmental relations to railroad transportation; railroad consolidation; readjustment of realtive freight-rate schedules; relation of highways and motor transport to other transportation agencies; development of waterways and coordination of rail and waterway service.

The reports of these committees were placed in print, distributed to the organizations in the membership of the chamber, and placed before the conference which the board of directors had contemplated in its original authority, and which was in session at Washington in January, 1924. The conclusions to which the conference came, after considering all committee reports, have been distributed to the organizations in the chamber's membership.

These conclusions were also placed by the board of directors before a special committee on transportation, with a request that the committee should submit to the board of directors its report with respect to the conference of January, 1924. The members of the committee were: Harry A. Wheeler, chairman, Chicago; John W. Blodgett, Grand Rapids; Joseph G. Bradley, Dundon, W. Va.; Herbert W. Bramley, Rochester, N. Y.; N. N. Dalton, Kansas City; Winthrop M. Daniels, New Haven, Conn.; William J. Dean, St. Paul, Minn.; F. C. Dillard, Sherman, Tex.; Paul J. Kruesi, Chattanooga, Tenn.; George W. Niedringhaus, St. Louis; Charles L. Sanger, Dallas; Henry D. Sharpe, Providence; Harvey D. Trunkey, Spokane; James J. Wait, Chicago.

The committee on transportation has now presented its report. This report is immediately submitted by the board of directors to the organization members of the chamber, for a referendum vote.

Accordingly, there are printed in this pamphlet:

1. The committee's report.
2. Arguments in the negative.

PERSONNEL OF COMMITTEE

Wheeler, Harry A., chairman: Banker, of Chicago; president, Union Trust Co.; formerly president of Chicago Association of Commerce; formerly president of Chamber of Commerce of the United States; chairman of the National Transportation Conference of 1919; member of the national chamber's railroad committee, 1916 to 1923; member of national chamber's senior council.

Blodgett, John W.: Lumber manufacturer, of Grand Rapids; president, National Lumber Manufacturers' Association; formerly chairman, good roads committee, Grand Rapids Association of Commerce; director, Federal Reserve Bank, Chicago.

Bradley, Joseph G.:[1] Coal operator, of Dundon, W. Va.; president Elk River Coal & Lumber Co.; director and former president of National Coal Association.

Bramley, Herbert W.: Merchant, of Rochester, N. Y.; vice president, Sibley, Lindsay & Curr Co.; vice president and formerly chairman, transportation committee, Rochester Chamber of Commerce.

Dalton, N. N.: Manufacturer, of Kansas City; vice president, Peet Bros. Manufacturing Co.; formerly president, Kansas City Chamber of Commerce.

Daniels, Winthrop M.:[1] Professor of transportation, Yale University, New Haven, Conn.; formerly member, Board of Public Utility Commissioners of New Jersey; formerly chairman, Interstate Commerce Commission; member, National Transportation Conference of 1919.

Dean, William J.: Merchant, of St. Paul; president, Nicols, Dean & Gregg; director, Chamber of Commerce of the United States.

Dillard, F. C.: Lawyer, of Sherman, Tex.; formerly president, Texas Bar Association; formerly vice president and general counsel, Chicago, Rock Island & Pacific Railway Co.; member, railroad committee of national chamber, 1917 to 1923.

Kruesi, Paul J.: Manufacturer, of Chattanooga; president, Southern Ferro-Alloys Co.; president, American Lava Corporation; former director, Chamber of Commerce of the United States.

[1] Unable to attend the meeting at which the committee's report was prepared.

Niedringhaus, George W.: Manufacturer, of St. Louis; president, National Enameling & Stamping Co.; director, Chamber of Commerce of the United States; member of fabricated production department committee of the national chamber.

Sanger, Charles L.: Merchant, of Dallas, Tex.; vice president, Sanger Bros.

Sharpe, Henry D.: Manufacturer, of Providence, R. I.; president and treasurer, Brown & Sharpe Manufacturing Co.; member of national chamber's committee on education, 1922.

Trunkey, Harvey D.: Merchant, of Spokane, Wash; vice president, McClintock-Trunkey Co.; director, Intermediate Rate Association.

Wait, James J., of Chicago: Traffic manager, Hibbard, Spencer, Bartlett & Co.; chairman, freight traffic committee, Chicago Association of Commerce.

Report of Special Committee on Transportation

To the Board of Directors of the Chamber of Commerce of the United States:

The committee has given careful consideration to the report of the transportation conference, and other materials before it, and submits the following report and recommendations:

1. NATIONAL TRANSPORTATION POLICY

Transportation needs.—The transportation shortage in the year 1922 emphasized in the minds of all classes of the American people the need for the adequate development and practical coordination of the national transportation system—rail, water, and highway—to keep pace with the ever expanding commerce of the Nation.

Although the railroad tonnage moved in the fall of 1922 surpassed any previous record, nevertheless serious losses fell upon some sections of industry, particularly agriculture, because of inadequate access to markets, and such losses to the public in time of transportation shortage probably exceeded what the necessary additional facilities would cost.

Railroads.—Records of past growth of railroad traffic, as well as the increasing population and increasing per capita use of transportation in the indicate a probable increase of at least 33⅓ per cent in freight traffic and 25 per cent in passenger traffic on the railroads in the next 10 years. The report of the transportation conference presents an estimate, prepared by competent authorities, that the improvements and additional facilities required during the next 10 years to handle the expected increase in traffic will cost at least $7,870,000,000, besides the amounts that will be spent for the improvement of the existing service to render it safer and better. To provide for the necessary improvement and expansion of the railroad system of the United States constitutes the chief problem to be met in considering the national policy with regard to railroad transportation.

Waterways.—Treatment of our waterways and their coordination with other carriers also constitutes an important part of the national transportation policy. Unquestionably water transport under certain conditions is cheaper and better than rail transport. However, water transport has its limitations. The aim should be to determine the desirable relation between railways and waterways, the principles that should govern the development and utilization of waterays and their coordination with railways, and the best means of arriving at a sound and comprehensive program for the future. With our transportation needs growing so rapidly, it is of the utmost importance that every facility making for cheap, safe, reliable, and convenient transportation be developed, particularly in those regions where the rapid growth of industry and commerce threatens to surpass the expansion of facilities.

Motor transport.—A new agency in transportation—the motor vehicle—is destined to play a large part in our completed transportation system. Inevitably the rapid growth of this new agency has had its effect on rail and water transport. There has been, and still is, misunderstanding and conflict as to the proper fields of rail, water, and highway transport, but a good beginning has been made toward a readjustment to meet the new conditions.

The motor vehicle has proved its unquestionable value in our economic system. It has greatly extended the farmer's field of operation, bringing such additional land under cultivation. It has brought new sources of raw materials within economic reach of markets. It has quickened the industrial life and facilitated the process of distribution. All these influences have contributed to our national prosperity and have thrown an enormous new tonnage upon our rail carriers.

Congestion of transportation generally centers around the terminals of our great cities, and here lies the greatest opportunity for the motor truck. By the use of motor transport the facilities of the terminals can be so expanded as greatly to increase their capacity.

Cooperation.—The time has come when all interests, political and private, must divest themselves of accumulated prejudices and passions in the treatment of transportation; when they must realize the country's dependence upon a continued and constant expansion, and plan such relations of Government to this industry that it shall be able to serve the full measure of national progress when all forms of transportation must study their proper relation to each other, in order to develop the full measure of service in the transportation structure as a whole; and when national policies which affect railroads, through regulation, and affect as well water highway and motor highways, must be coordinated, to stimulate and encourage the expansion which every study shows will be inevitably required.

Recommendation.—Your committee is of the opinion that the national policy with regard to transportation should have in view the development and maintenance of an adequate system of rail, water, and highway transportation, with full cooperative service of all agencies that will contribute to its economy and efficiency.

2. THE TRANSPORTATION ACT, 1920

Purposes of act.—The transportation act was adopted while the railroads were still in Federal control and had for its purposes the return of the roads to private management, the liquidation of war conditions, and the establishment of a permanent national transportation policy.

The liquidation of war conditions is nearly accomplished and the remarkable result achieved in 1923, in handling an unparalleled tonnage practically without car shortage, is the best evidence of the vitality and ability of the railroads under private operation. The basic feature of the new transportation policy as affecting the railroads is the recognition of the duty on the part of the Government, through affirmative action, to place the carriers in a position where they can fully discharge the duties they owe to the general public, to their employees and to their security owners. The validity of the provisions of the act designed to carry this new policy into effect has three times been challenged and as often sustained and approved by the Supreme Court of the United States.

The transportation act also defines for the first time a constructive policy for the development of water transportation in coordination with the railways, declaring it to be "the policy of Congress to promote, encourage, and develop water transportation service and facilities in connection with the commerce of the United States and to foster and preserve in full vigor both rail and water transportation."

Chamber commitments on transportation.—The national chamber is already committed through referenda in favor of the following important principles embodied in the transportation act: Private ownership and operation of railroads under a comprehensive system of government regulation; a statutory rule of rate making providing for a fair return upon the fair aggregate value of the railroad property devoted to the public service in each rate district; exclusive Federal control of the issuance of railroad securities and of the expenditure of proceeds from the sale of such securities; public investigation of every railroad labor dispute threatening interruption of traffic, with a deciding voice to the public on any body set up for that purpose, and permission for all of the railroads of the country to consolidate in a limited number of strong competing systems.

Private ownership.—The advantages of private ownership and operation of railroads to the people of the United States are so great that we may assume the continuance of private ownership in this country. We must recognize, however, that private ownership of railroads carries with it Goverment regulation. Railroads and other public utilities perform service of a public nature. The ownership of the property used is private, but the service is public and should be regulated in the public interest.

Rule of rate making.—The principle of fair return can not be seriously questioned. It is impracticable, however, to fix a separate rate scale for each railroad

in a district, and, as a matter of fact, competitive conditions would largely nullify any attempt to do so. In rate making, therefore, the principle of a fair return must be applied to the carriers of each district as a whole, rather than to individual properties. It is accordingly provided in section 15a of the interstate commerce act as amended by the transportation act that:

"In the exercise of its power to prescribe just and reasonable rates the commission shall initiate, modify, establish, or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the commission may from time to time designate) will, under honest, efficient, and economical management and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation."

The committee believes that this rule of rate making is sound in principle and formulated along practical lines.

Control of security issues.—The provisions of the transportation act providing for Federal control of the issuance of railroad securities and of the expenditure of the proceeds of such sale appear in practice to be operating satisfactorily and to require no change at the present time.

Railroad consolidation.—Another important provision of the act is that dealing with railroad consolidation. The national chamber through referendum is committed in favor of "permission for consolidation in the public interest, with prior approval by Government authority, in a limited number of strong competing systems." This committee is in accord with that position and, in section 4 of this report, discusses certain supplementary measures to facilitate consolidation.

Need for further experience.—While the underlying principles of the transportation act are thus believed to be sound and practical, there are provisions arousing opposition and provoking suggestions for amendment, but the essential fact in the present situation is that the act has not yet been in force sufficiently long to develop conclusive experience regarding the desirability or undesirability of the several provisions. This is particularly true in view of the abnormal conditions existing during the first three years following the adoption of the act.

Recommendation.—The committee therefore recommends that there be no change in the important principles of the transportation act until after further experience.

3. RECAPTURE OF EXCESS EARNINGS

Chamber vote on recapture.—An important provision of the transportation act not heretofore indorsed by the national chamber is that known as the recapture clause. The principle involved was submitted to the chamber as a part of referendum 28, but failed to obtain the necessary two-thirds vote for adoption, the vote being 863½ in favor and 542½ opposed.

This vote was taken before the passage of the transportation act and before the recent decision of the Supreme Court sustaining the constitutionality of the recapture clause. Your committee feels that it is an appropriate subject for resubmission.

Explanation of clause.—The clause in question provides for recapture by the Government of one-half of the surplus above 6 per cent that any railroad may earn. This provision, in the opinion of your committee, is an appropriate and indispensable part of the rule of rate making and seems necessary to promote the liberal policy of rate regulation needed to permit railroad development adequate to the public need without giving any carriers excessive profits.

Purpose.—Without this provision it would, as stated in the act, be "impossible * * * to establish uniform rates upon competitive traffic which will adequately sustain all carriers which are engaged in such traffic and which are indispensable to the communities to which they render the service of transportation, without enabling some of such carriers to receive a net railway operating income substantially and unreasonably in excess of a fair return upon the value of their railway property held for and used in the service of transportation."

On account of the more liberal policy of rate making made possible by the recapture clause, taking cognizance of the income requirements of the necessitous roads to enable them to maintain service, the act does not consider all of the increase in revenue which the more fortunately situated roads may derive from such more liberal policy as being subject to their control, but requires that they shall hold one-half of the excess over a fair return "as trustee for, and shall pay it to, the United States."

Carrier's share of excess earnings.—The act goes on to prescribe that the other half of such excess, which is to be retained by the carrier, shall be placed by it in a reserve fund in its own possession, and available for it to draw on to pay dividends, interest or rent, "to the extent that its net railway operating income for any year is less than 6 per cent of the value of the railway property held for and used by it in the service of transportation." After the fund has reached 5 per cent of the value of the property, the company may use its portion of the earnings for any lawful purpose.

The recapture clause thus constitutes a desirable step in the direction of systematic provision of reserve funds in good times to bridge over inevitable periods of depression. Incentive to efficiency and economy of management is preserved while at the same time the public interest is protected. A liberal policy of rate regulation can be followed without giving any carrier excessive profits.

Use of Government's share.—The uses to be made of the funds paid in to the commission as a result of the recapture clause are stated by the statute to be the "furtherance of the public interest in railway transportation, either by making loans to carriers to meet expenditures for capital account, or to refund maturing securities originally issued for capital account, or by purchasing transportation equipment and facilities and leasing the same to carriers." Loans are to be made to carriers whose prospective earning power furnishes reasonable assurance of the carriers' ability to repay the loans within the time fixed. The public will thus benefit both by the resulting extensions and improvement of the transportation plant and equipment, and by the interest from the loans and the rentals contemplated.

Recommendation.—The committee believes that the principle of recapture of excess railroad earnings is in the public interest as an essential part of the rule of rate making.

4. SUPPLEMENTARY LEGISLATION TO FACILITATE RAILROAD CONSOLIDATION

Consolidation a normal process.—The transportation act of 1920 was intended to make possible the completion of the normal process of railroad grouping which began more than 70 years ago, but has in recent years been largely suspended through the operation of the antitrust laws and through the restricted return to the carriers. Such consolidation of railroads under the general principles outlined in the transportation act will be most helpful in developing strong and stable railroad systems able to render effective service to the public.

Management problems.—The creation of large consolidated systems will bring up certain management problems, notably those of assuring appropriate contacts with and attention to the needs of particular localities, the financing of these large consolidations for systematic development and the maintenance of proper cooperative relations with the general body of railroad employees. However, experience in other American industries, as well as in some of the larger existing railroad systems, has demonstrated that there are no conditions inherent in large organizations that necessarily prevent them from attaining or even exceeding the standards of efficiency of which small units are capable. These ends may be accomplished through (*a*) a highly developed and specialized central planning and supervising organization in each system, in close contact with local administrative units, (*b*) decentralization of administrative responsibility as to routine operations and the application of general programs to localities, and (*c*) stimulation of local initiative and responsiveness to local needs.

Strong and weak roads.—Railroads can be consolidated without injustice to the owners of either the strong or the weak roads and without injustice to the public if the roads are brought together on a fair basis of value and after due consideration of demonstrated earning capacities, property values, and the special conditions surrounding individual properties. The public interest in the financing arrangements will be protected, as prescribed by the act, through the limitation on capitalization, and the provisions to insure reasonable rates and a reasonable investment return.

With the removal of legal obstacles and with the change that has taken place in public sentiment it may be expected that railroad consolidation will proceed, provided there is such fair and liberal application of the statutory principles of rate regulation as will promote confidence and initiative in railway administration and provided the general principles followed in passing on proposed consolidation are in harmony with the line of natural evolution in the grouping of railroads.

Chamber vote on consolidation.—The present law permits the railroads to consolidate subject to the approval of the Interstate Commerce Commission, but does not require them to do so. To this policy of permissive consolidation the chamber is committed through referendum 28 by a vote of 1,309½ in favor to 125½ opposed.

Compulsory consolidation.—It has been urged that consolidation be made compulsory. Compulsory consolidation, however, involves so many constitutional questions and is such an intricate and involved proposition that it might hinder rather than promote consolidations, and should not be considered at this time.

Supplementary legislation needed—Joint terminals—Exchange or reissue of securities.—Experience already obtained in endeavoring to work out consolidations under the transportation act indicates the need of supplementary legislation to perfect its consolidation provisions. It is, for example, desirable to render possible the joint ownership of certain lines or terminals by two or more of the consolidated systems. Furthermore, instead of requiring, in each instance, the creation of a new consolidated corporation, and exchange or reissue of the securities of the existing corporations, it appears desirable to permit any of the large existing systems to purchase the physical properties of any railroad company if approved by the Interstate Commerce Commission, or to exchange their own securities for those of the roads to be acquired and thereby have the smaller railroad companies absorbed by and merged into the existing systems.

Minority stockholders—Transfer taxes.—It will doubtless also be necessary to provide some method of dealing fairly with the minority stockholders so that plans approved by the commission and assented to by a majority of the owners can not be blocked by a minority interest. Again, on account of the heavy taxes which would ordinarily be levied on such mergers, special provisions of law may be necessary to relieve consolidations of this burden.

Organization bureau and committees.—Furthermore in cases where new systems are to be created, appropriate agencies will be needed to supervise and promote the actual accomplishment of the consolidations. Presumably the Interstate Commerce Commission will require within its own organization a special bureau to supervise the work; and it would seem desirable that, at the appropriate time, an organization committee should be created for each proposed consolidated system to assist in bringing about agreement upon the values of the several parts of the system to be formed, the ratios of the securities to be exchanged and the many other details involved in bringing several companies into one organization.

Federal incorporation.—Addition legislation is also desirable to enable proposed consolidated companies to obtain Federal charters, thus simplifying regulation and placing all companies on an equality as to corporate powers and responsibilities. The Chamber of Commerce of the United States is already committed by referndum in favor of Federal railroad incorporation. Railroad consolidation, however, should not wait upon the enactment of Federal incorporation legislation, either compulsory or permissive. Indeed, the States themselves may lead the way by enacting liberal and uniform laws removing the difficulties and costs of consolidating the existing railroad companies.

Recommendation.—In order that full opportunity may be given the railroads to consolidate by voluntary action subject to the approval of the Interstate Commerce Commission, the Committee recommends the adoption of appropriate supplementary legislation, in harmony with the general principles of the transportation act, to facilitate such consolidation.

5. JOINT USE OF TERMINALS

Advantages of joint use.—There is much evidence that the main trunk-line sysyems of the United States could handle a largely increased tonnage if the capacity of yards and terminals were equivalent to the capacity of running tracks. Elimination of delays in yards and terminals would greatly increase the available car supply and save capital investment in equipment and loss of interest to carriers and shippers. It is impracticable, especially at large centers, for carriers at reasonable expense to secure adequate space for terminal facilities to serve comprehensively all industrial and commercial sections of such centers. If practicable, it would involve great duplication of investment and unnecessary expense upon the commerce, thereby increasing the cost of living and of doing business. The establishmnet and maintenance of individual terminals, even though adequate, when disconnected and uncoordinated with each other, imposes

upon industries and shippers similar dulpication of effort and extra expense, and imposes upon public streets undue congestion.

Provisions of transportation act.—The interstate commerce act as amended by the transportation act recognizes the desirability under certain circumstances of joint use of terminals. Paragraph 4 of section 3 of the act as amended provides in part as follows:

"If the commission finds it to be in the public interest and to be practicable, without substantially impairing the ability of a carrier owning or entitled to the enjoyment of terminal facilities to handle its own business, it shall have power to require the use of any such terminal facilities, including main line track or tracks for a reasonable distance outside of such terminal, of any carrier, by another carrier or other carriers, on such terms and for such compensation as the carriers affected may agree upon, or, in the event of a failure to agree, as the commission may fix as just and reasonable. * * *"

Cummins bill.—The consolidation bill introduced by Senator Cummins in the Senate January 24, 1924, gives further consideration to the desirability of joint use of terminals in the following proposed amplification of paragraph 4, section 5, of the interstate commerce act as amended by the transportation act:

"* * * In its plan the commission may, to such extent as it finds the public interest requires—

"(a) Omit from the systems terminal properties, including main-line tracks for a reasonable distance outside the terminals; and either omit from all the systems or include in any one of the systems properties comprising any section of railway lines, if the commission further finds that the properties are or ought to be available for common use by two or more systems. The commission shall in its plan designate the extent to which such systems shall have the common use of such properties.

"(b) Provide for the extension or abandonment of the properties of any system, or for the enlargement of the properties of terminals or lines that are, under subdivision (a), omitted from the systems. Where terminal properties are to become, under the plan provided for in this paragraph, a part of a system, the commission may, in its order adopting the plan as authorized in paragraph (5), attach such conditions as will insure the joint use, in the public interest, of such terminal properties by such system in connection with any other system or systems."

Local investigations.—It is of great importance that studies of the possibilities to be derived from an extension of the joint use of terminals should be promptly carried on by competent authorities, including suitable representation of the carriers concerned, who have, in various large centers, already organized terminal committees.

Competitive superiority.—The provision in the transportation act that the Interstate Commerce Commission, in the event of failure of the interested carriers to agree upon terms, shall fix the terms for joint use of terminal facilities should assure just compensation to the carrier forced to relinquish any competitive superiority.

Recommendation.—The committee therefore recommends that the policy of connecting and coordinating terminal facilities, particularly in congested centers, and providing for their joint use on terms prescribed by the Interstate Commerce Commission, be applied as rapidly as practicable.

6. RAILROAD REGULATION BY ADMINISTRATIVE AGENCIES

History of regulation.—The first measures taken in the United States to regulate railroads were enactments prohibiting unfair practices. The enforcement of these laws was left to ordinary procedure in the courts. Experience showed the commissions to assist in the administration and enforcement of railroad laws were necessary and such commissions were established by many of the States during the decade beginning in 1870. After the creation of these commissions, however, the States still continued to pass laws dealing with specific practices of the railroads instead of enacting statutes embodying principles to be enforced and administered by the commissions.

In 1887 Congress began to regulate railroads by the passage of the interstate commerce act and entrusted the administration of the act to the Interstate Commerce Commission. In the many laws that have been passed since 1887 Congress has generally adhered to the principle of regulating carriers through an administrative commission, thus recognizing that the regulation of railroads and other carriers is an intricate problem requiring the skilled judgment and

experience of an administrative agency and that successful regulation can only come about as a result of continuity of policy in the enforcement and development of administrative procedure and practice.

Provisions of transportation act.—The transportation act, 1920, gives the Interstate Commerce Commission large administrative discretion. It is authorized to determine the value of the carriers' property, to decide what shall be a fair return on that property, and to fix rates intended to yield such return. The commission's approval is also required as to what new lines and terminals may be constructed from new capital and what securities are to be issued to obtain the required funds. In these and other particulars the commission has been given the discretionary power necessary to protect the interest of the public while safeguarding the rights of the carriers.

Control over roads.—Work of commission.—The Interstate Commerce Commission should retain its control over railroad rates. Its power of suspension promotes stability. Its power to correct discriminatory intrastate rates gives it the undivided responsibility which is desirable. The growing cooperation between it and the State commissions gives promise of ever increasing coordination of the functions of each in their respective jurisdictions in the public interest. The commission has, however, a heavy burden of varied duties which would tax the capacity of any tribunal. In order to enable it to carry out its duties effectively, it is of great importance that the commission be supplied with adequate facilities and appropriations together with the necessary authority to improve its efficiency by regional organization or otherwise.

Recommendation.—The committee believes that the public regulation of common carriers should be carried out through the properly constituted Federal and State administrative agencies, provided with adequate facilities to make their work prompt and effective, rather than by inelastic legislation dealing with rates or other problems.

7. READJUSTMENT OF RELATIVE FREIGHT RATE SCHEDULES

General level of rates—Disparities.—Railroad rates in the United States are not, as a whole, unreasonably high, either as compared with pre-war rates in relation to general price levels or as compared with foreign rates, and yield a return considerably below that which the Interstate Commerce Commission has determined as fair. They do not as a whole hinder the processes of production or distribution. The present problem is one of a better adjustment of relative rates—not a general reduction of all rates. Great economic changes incident to and resulting from the war have added to previous disparities, which render a readjustment of relative freight rates of real importance.

A survey of rates discloses a great lack of uniformity, as between either classes or products or regions, and some unreasonable disparities exist, as is evident from the table of class rates appended to the report of Committee III of the transportation conference. In the readjustment of freight rates, consideration must be given to basic principles of rate making and to the particular conditions affecting each type of business.

Rate readjustments.—It appears to be a matter of common agreement that a readjustment of freight rates, both class and commodity, where such readjustment has not already been made, should tend to produce an increase in total revenues, the application of which increase to needed reductions in other rates would serve a very direct public interest. The amounts that may be involved in such readjustments, as affected by class rate revisions, would be limited because of the relatively small volume of the business concerned, but would be augmented through the correction of such commodity rates as may be found to be unduly low.

Any such adjustment will of course be subject to careful determination by the Interstate Commerce Commission and will doubtless be limited, on the one hand, to articles which by reason of their value can bear an increased burden and, on the other hand, to those articles on which the reduction of rates thus made possible will be of the greatest benefit to the public.

Readjustments methods.—The technical, as well as the delicate, nature of the questions involved in rate adjustments is apparent. Through the interchange of views between carriers and shippers, coupled with investigations by the Interstate Commerce Commission, some progress toward the correction of the inequalities and disparities mentioned is being made. While these are the only methods that will produce sound results without unsettling business conditions during the process, there is urgent need for extensive adjustment of this character.

Revision of rates in three important sections of the country is now in progress. The public interest demands that this task should be discharged by existing agencies in pursuance of established methods, but that it should be prosecuted with the greatest possible dispatch.

Recommendation.—The committee believes that the present situation demands a readjustment of relative freight rates rather than a general reduction of all freight rates; and recommends that such readjustment be prosecuted by the existing agencies in pursuance of established methods with the greatest possible dispatch.

8. COMPREHENSIVE PLAN FOR WATERWAY DEVELOPMENT

Waterway traffic.—Despite a rapid growth of our population and a more rapid growth of our commerce and transportation needs, the inland waterways of the United States, once our main reliance, are as a whole carrying little more traffic than twenty-five years ago.

This fact leads to the question why the waterways are not taking a proportionate share of the rapidly increasing traffic of the country. The committee believes that it is because river improvement has been piecemeal instead of on a continuous and comprehensive plan, and further because of competition by the railroads instead of compulsory cooperation and a fair division of rail-water rates.

Congressional authorizations.—Congress has in the past from time to time called upon the Corps of Engineers of the United States Army for separate reports upon specified individual waterways. As a result of these reports and the action taken upon them, the country has many thousand miles of commercially navigable inland waterways. Congress has never yet, however, authorized a comprehensive survey and report upon the waterways of the country as a whole with a plan and order of priority for the development of the several waterways as parts of the national transportation system.

Need for waterway improvement.—The country is in constant need of more transportation facilities. Industrial expansion has overtaken railroad development, and some railroads in times of peak-load traffic have been unable to provide adequate service, thus threatening to retard the economic development of the country. It is desirable to supplement rail with water transport as a safeguard against recurrence of transportation shortage.

Waterway transport is the cheapest and best form of transport under certain conditions. For example, the economy of movement of grain, coal, and ore on the Great Lakes is beyond dispute, and our inland waterways have contributed essentially to the upbuilding of some of our great industrial centers. There is an increasing realization of the wastefulness of permitting a means of transportation often potentially the most economical to remain undeveloped through failure to provide the necessary facilities and the necessary coordination with other carriers.

Waterway policy.—The Government is already committed to certain waterway improvements calling for completion at the earliest possible date. The question as to what, apart from these unfinished projects, shall be done with the countrys' waterways—what further rivers shall be improved and what canals shall be constructed—should be decided after ascertaining to what extent inland waterways should be given channels that can be regularly used by barges and power vessels of such types and sizes as to enable the waterways to be of real commercial service in lessening the present costs of transportation or increasing the total of available efficient transportation facilities. Furthermore, consideration should be given to the probability of the waterways being used if made available, and to measures that will make their use probable. To answer all of these questions the possibilities and limitations of each waterway as a useful part of the country's transportation system, the relative importance of the several waterways, the order in which projects should be undertaken, and how the waterways as improved can be so coordinated with other means of transportation as to make the waterways of maximum service, should be investigated.

Corps of Engineers.—The Corps of Engineers of the Army, with its extended experience in the examination, design and construction of existing projects and the analysis and presentation annually of commercial statistics for all waterways, is the logical agency to nake this nation-wide survey, working in consultation with the Department of Commerce and other public and private agencies with regard to the engineering, commercial, and economic phases.

Recommendation.—The committee recommends, therefore, that Congress be urged to direct the United States Army Engineers to make a comprehensive

survey of the waterways of the country as a whole and in their relation to other transportation agencies, and to recommend a definite plan and schedule of priorities for waterway development.

6. MISSISSIPPI-WARRIOR BARGE LINES

Origin—Purpose of operation.—As a war measure the United States Government in 1918 started the operation of barge lines on several canals and on the Mississippi and Warrier Rivers. By the transportation act the operation of these Government barge lines was transferred from the United States Railroad Administration to the Secretary of War, who has disposed of all the lines except the one operating on the Mississippi between St. Louis and New Orleans and the one operating between New Orleans and Birmingport, Alabama, via Mobile. These two services are still being maintained for the prpose of showing the value of barge-line transportation under present-day conditions. It is the hope of the Government thus to determine whether and under what conditions river transportation can render a useful and profitable service in competition with the railroads for port-to-port traffic and, in coordination with the railroads, for traffic over joint rail-and-water routes. As soon as such services are shown to be practicable and profitable it is expected that the Government will endeavor to sell out its lines to private carriers.

It is too soon to decide what the results of these operations will be. Thus far the Warrior service has been maintained at a loss. The Mississippi service has shown a deficit for most of the period of operation, but there are prospects that this service may soon prove to be definitely profitable. The test, however, to be of value—to be at all conclusive—must be carried on for a further period of at least five years.

Hampering conditions.—At present the barge lines are hampered by the lack of certainty on the part of the shipping public as to how long the service will be continued, and by their inability to finance themselves in periods of depression. These disadvantages would largely be overcome if the lines were operated as they naturally would be by private operators. This would put the possibilities of waterway operation more promptly to conclusive test and thus enable the Government the sooner to dispose of the lines.

Recommendation.—The committee recommends that, to determine more fully the possibilities of inland waterway transport under private operation, the Secretary of War be given authority and funds to operate the barge lines on the Mississippin and Warrior Rivers in accordance with good commercial practice.

10. DEVELOPMENT OF WATERWAY SERVICE

Since the inland waterways are to be an integral part of the country's transportation system, there should be a free interchange of traffic between the railroads and the waterways, and suitable physical connections.

Need for through traffic.—In general, a railroad could not live on the traffic that originates and ends on its own lines, nor, with exceptions, can carriers on a river or canal hope to live if their traffic is composed entirely of goods that originate on the banks of the waterway and are not carried to points beyond the river and canal ports. Practical and positive steps must be taken, therefore, to bring about that measure of coordination of waterways and railroads which is required in the interest of the waterways and the public, and, so far as practicable, to substitute friendly cooperation in place of hostile competition.

Congressional action.—Congress has long recognized that its duty as regards nland waterways does not end with river improvement and canal construction, and in 1912 gave the Interstate Commerce Commission authority to compel railroads, when the demand may reasonably be made, to connect their tracks with the docks of vessels to facilitate the movement of interstate commerce. By the transportation act, 1920, the Interstate Commerce Commission was also given authority, after appropriate hearings, to act on applications for joint rail-and-water routes and rates.

Through routes and rates.—It is to be expected that these applications will be filed by the carriers by water rather than by the railroad companies. However, the expense of bringing and arguing such applications before the Interstate Commerce Commission, and the time required for such decisions, form an almost unsurmountable barrier to private enterprise in common-carrier service on the waterways. Water transportation therefore can not have full play in the public interest until these handicaps are reduced.

The Federal Government, through the Mississippi-Warrior barge lines, has taken the initiative in bringing before the Interstate Commerce Commission applications calculated to develop the principles governing the establishment of joint rail-and-water routes and rates. Certain of these principles were tentatively decided by the Commission in the case of the United States War Department, Inland Waterways, Mississippi-Warrior Service *v.* Abilene and Southern Railway et al., decided February 6, 1923.

Principles governing same.—The general principles announced by the commission are in substance as follows:

1. The barge line petitioning for the establishment of rail-and-barge routes must prove that such routes are in the public interest.
2. Rail-and-barge routes should not "be established where the degree of circuity would be excessive, nor where the barge line's share of the joint haul would be so short that interchange expense would offset the lower cost of water transportation."
3. "No rail-and-barge route should be established where the short-line rail distance via the port of interchange between the interior point and the port of origin or destination exceeds by more than one-third the short-line rail distance over the most direct route, nor where the short-line rail distance between the interior point and the port of interchange exceeds two-thirds of the short-line rail distance between the interior point and the port of origin or destination. Inasmuch as this rule is arbitrary, it ought not to be too rigidly applied, in disregard of competitive or commercial conditions."
4. The rates over the joint rail-and-barge routes may be a differential under the all-rail rates.

With the foregoing statement of general principles as a working basis the commission left it with the rail and water carriers to proceed as far as possible in working out detailed agreements, failing which, recourse in particular cases could be had to the commission. The solution of these problems is vital to the development of common carrier service on a large scale on our inland waterways.

Duty of Secretary of War.—In the transportation act Congress went still further in defining a policy for inland waterways, declaring that policy to be "to promote, encourage, and develop water transportation, service, and facilities in connection with the commerce of the United States, and to foster and preserve in full vigor both rail and water transportation." In furtherance of this end Congress made it the duty of the Secretary of War to investigate types of boats, water terminals, transfer facilities, and railroad connections, to advise with committees and cooperate in the preparation of plans for terminal facilities; to investigate the existing status of transportation on the different inland waterways of the country with a view to determining whether they are being utilized fully and are interchanging traffic with the railroads; and "to investigate any other matter that may tend to promote and encourage inland water transportation;" also to compile and publish such inland waterway statistics and information "as he may deem to be of value to the commercial interests of the country."

Duty of States and municipalities.—The States and municipalities have also a duty in the public interest to further the establishment and maintenance of effective service on rivers and canals, particularly by making available the necessary water frontage with public terminals where desirable, and by seeing that suitable track connections are provided between such public terminals and the railroads.

Commercial organizations.—Chambers of commerce and other commercial organizations should promote waterway service by assisting in formulation, adoption and execution of plans for the systematic development of the inland waterway terminals. They can also support the establishment of physical connections and of through rail-and-water routes and rates, and assist individuals and companies in establishing or extending boat lines.

To bring about a large use of inland waterways, a cooperative effort of public authorities, business enterprise, and the shipping public is required.

Recommendation.—The committee recommends that waterway service, including through rail-and-water routes and rates with suitable divisions of rates between the two types of carrier, be facilitated by public and private agencies wherever economically warranted and in the public interest.

11. OPTIONAL STORE-DOOR COLLECTION AND DELIVERY

Present methods.—The present method of handling less-than-carload goods through the freight stations in our larger traffic centers is wasteful and time consuming, and is largely responsible for frequent congestion at those stations.

Delays.—The prevailing practice is to notify the consignee of the arrival of less than carload lot freight after it has been unloaded in the freight house, or the cars containing carload freight have been placed on the team or industry tracks. The railroads give the consignee an allowance of 48 hours free time for the loading and unloading of carload freight and for the removal of less than carload lot freight from the freight stations. Partly because of unorganized cartage methods and inadequate storage facilities and partly because many goods are sold after arrival at the terminal, a large proportion of the consignees take full advantage of the free time allowance, so that carload shipments frequently remain on the team tracks in excess of two days and inbound less than carload lot shipments remain in the freight houses more than three days.

Congestion.—Failure to remove the less than carload lot freight from the freight houses often results in such congestion that the equipment is held up, and moreover causes a piling up of goods in the freight houses, with great resultant delay and confusion in locating and removing shipments, and a general slowing down of the entire freight-house operation. The tendency of shippers to dump their outbound goods upon the freight house at the last moment produces the same effect. This in turn increases cartage inefficiency and costs by delaying the shippers' vehicles.

Cartage load inefficiency.—At most of the terminal centers the cartage to and from the stations is unorganized, and whether done by the vehicles of the shippers and consignees themselves or by truckmen under contract, the trucks often do not carry full loads and there is a large amount of empty one-way movement. This multiplicity of empty or partly loaded trucks waiting in line adds greatly to the congestion at the stations and on the streets.

Store-door service.—At a large city, where the terminals are complicated, inbound less than carload lot freight should be delivered to the address of the consignee and outbound less than carload lot freight should be collected from the consignor by the cartage organization at a reasonable charge plus the freight rate, and in full cooperation with all rail and water carriers serving that city. The separate charge for collection or delivery in the published tariffs is desirable so that the shipper or consignee may readily determine whether it is to his advantage to avail himself of this service and also to avoid any tendency toward forcing the carriers to absorb these collection and delivery charges.

Advantages of same.—Such a plan would involve cooperation by the cartage organizations, the carriers and the shippers and would produce the following results:

Prompt delivery.—1. Inbound less than carload lot freight would be delivered promptly upon arrival. It should be arranged to dispatch the bulk of the inbound traffic from the stations as is done at English and Canadian freight stations. The delays arising under the present system of notifying consignee and holding goods until called for could thus be avoided.

Terminal relief.—2. The rail haul could begin or end at an outlying station, readily accessible to highway vehicles, thus avoiding the delay and expense of moving cars or freight through the terminal to some less than carload lot freight station in the congested district.

Terminal outlay.—3. The railroads would be relieved of the necessity of increasing their expensive less than carload lot freight stations in the heart of the busy, and generally congested, business districts.

Reduction of steel congestion.—4. Street congestion would be reduced.

Such a system of store-door collection and delivery would constitute a great contribution on the part of organized cartage to the solution of the terminal problem.

Recommendation.—The committee recommends that store-door collection and delivery, at the option of the shipper, with reasonable separately itemzied trucking charges in the published tariffs, be established as rapidly as practicable by agreement between the carriers and the shippers, beginning at the centers of greatest congestion.

12. MOTOR TRANSPORT AS AN AUXILIARY TO THE RAILWAY SERVICE

Terminal relief.—Organized motor transport, besides assisting in store-door collection and delivery, can relieve the railroads of various forms of uneconomical service within the terminal areas, thus reducing yard congestion and releasing many cars for more profitable line haul.

Motor field outside terminals.—Outside of the terminal areas there are distance zones, varying in different localities and for different commodities, in which one type of carrier, the motor for short haul and the railway (or waterway) for long haul, is clearly more economical than the other, and intermediate zones in which competition is inevitable. The motor vehicle also has a wide field where there is no other agency available.

Economic limitations.—It is to the public interest, as well as to the interest of the respective carriers, that the economic limitations of each type of carrier be recognized, that the railroads be permitted to discontinue unprofitable service to which the motor is better suited, and that the motor abandon its efforts to handle general traffic over excessive distances. However, because of the public character of their service, the railroads have performed and must continue to perform some service which is unprofitable, chiefly in territory where service by motor vehicle would also be unprofitable. To maintain adequate transportation in such cases, and avoid adding to the rate burden of the traffic, the railroads should be protected against unfair competition of motor carriers. In some cases unprofitable steam railroad service can be beneficially replaced by self-propelled railroad motor cars.

Supplementary services.—Rail lines can often extend or supplement their services by bus lines, and, in States where this is now prohibited, such restrictions should be abolished.

Recommendation.—The committee believes that wherever experience indicates that it will be in the public interest, regulatory bodies should facilitate the utilization of motor transport to replace uneconomical forms of rail service, to relieve yard and terminal congestion, and to extend existing steam and electric railway services.

13. REGULATION OF COMMON-CARRIER MOTOR VEHICLES

Need of regulation—Cutthroat competition.—There has been brought to the attention of the committee evidence of a need for a certain measure of regulation of common-carrier motor vehicles. This arises from the fact that a considerable part of motor transport is in the hands of operators who know little of cost accounting, and so make and break rates every day and are forced out of business when their trucks wear out. Under these conditions motor service in many cases remains undependable, and the public is unable to realize the full possibilities of motor transport, even though it may derive temporary benefit from charges below cost. The railroads, on the other hand, in cases where motor transport is more economical, will not be able to withdraw from unprofitable service and save the expense due to unnecessary stations and station personnel until the public is assured of reliable and continuous truck service.

Continuous service.—It is evident that if under certain conditions the motor vehicle is to supplant the steam or electric railroad in good weather, it must supply the service throughout the entire year and over definite routes at stated times. This indicates that the motor vehicle performing the service should secure a certificate of convenience and necessity from the duly constituted public authority and should be required to give continuous service. It also naturally implies that the State or local government must remove snow and otherwise maintain the highways in passable condition at all times as part of the highway maintenance.

Common and private carriers.—The requirement of continuous service can obviously be applied only to the common-carrier motor vehicle. It is not feasible or desirable to interfere with the shipper's right either to move his goods on his own trucks or to contract with private truck operators.

There has been a growing recognition during the past few years of the principle that those engaged in the business of common carrier by motor vehicle should be subject to regulation as to rates or service just as other common carriers.

Motor-bus lines.—Unregulated competition of motor-bus lines with electric railroads, or of several bus lines with each other, may temporarily give increased service or lower rates, but inevitably it will result in decreased earnings and a lowering of the standards of service, until one or all of the competitors are faced with ruin. Under proper regulation, intelligently and fairly applied, such as has been adopted in a number of States, the extent to which competition is desirable in the public interest rests with the regulatory body. Destructive rate cutting is prevented, and duly authorized motor-vehicle common carriers are accorded the same protection given to other public utilities, this at the same time providing the greatest measure of useful service to the public. Through judicious regulation, and only in this way, will it be possible to obtain efficient, economical, and adequate coordination of motor transport and electric or steam railroads.

Regulating bodies.—Municipal regulation of common-carrier motor service frequently interferes with the effectiveness of this form of transportation, particularly where such municipal regulation conflicts with regulation by the State.

The principle of regulation by State regulatory bodies of intrastate traffic has been quite generally accepted in this country and is believed to be sound as applied to motor-vehicle common carriers as well as to other public utilities.

The transportation act, 1920, while defining the national policy in relation to rail and water carriers in traffic affecting interstate commerce, does not cover highway common carriers engaged in such traffic. It remains for further experience to develop whether and to what extent Federal regulation of such carriers is necessary.

Recommendation.—The committee is of the opinion that the rates and services of motor common carriers, both freight and passenger, should be subject to regulation by the same State and Federal commissions which have jurisdiction over the operations of other common carriers, having particularly in view insuring to the public adequate, economical, and continuous service.

14. MAINTENANCE OF HIGHWAYS

Highways an economic need.—Since the motor vehicle is an essential addition to the transportation agencies required in our modern economic life, it follows that improved roads to carry the motor vehicle are equally necessary. These highways are free to the general public, and are built out of general public funds just as are schools, parks and many other improvements essential to the public health and welfare. The highway vehicle, as property, should naturally make its proportionate contribution to these general funds, as does all other property, including that of the railroads and other carriers.

Expense of maintenance.—The maintenance of the highways presents another question. In the case of steam and electric railways the investment in roadway is charged to capital account, and returns on this investment are paid out of income, but on the other hand the steam and electric railways have certain franchise rights in the use of their roadway. Since the highway vehicle derives a special benefit from the improved highway, your committee believes that it should bear the entire expense of maintaining these roads in as good condition as when they were built, even where this involves resurfacing or reconstruction of the same type of road. In addition to a maintenance tax, highway common carriers should pay a tax in exchange for franchise rights comparable to those owned by the other carriers.

By paying the cost of maintenance of the highways which it uses, the highway vehicle puts itself on an equality as to maintenance with the steam and electric railways, which pay for the maintenance of their own way and structures through direct charges to operation instead of by taxation.

Recommendation.—The committee believes that, in addition to bearing an equitable share of the general tax burden, the road users should pay the entire cost of maintenance of highways through special taxes levied against them, these special taxes being applied exclusively to that purpose.

Taxation of transportation agencies.—The committee has also considered the further recommendations of the transportation conference dealing with methods of general taxation of transportation agencies. While recognizing the great importance of the subject the committee feels that it is so interrelated with the whole question of public taxation that it should be considered in connection therewith rather than as a part of this report.

HARRY A. WHEELER, *Chairman.*
JOHN W. BLODGETT.
H. W. BRAMLEY.
W. J. DEAN.
F. C. DILLARD.
PAUL J. KRUESI.
GEORGE W. NIEDRINGHAUS.
CHARLES L. SANGER.
HENRY D. SHARPE.
H. D. TRUNKEY.
J. J. WAIT.

ARGUMENTS IN THE NEGATIVE

1. NATIONAL TRANSPORTATION POLICY

Your committee is of the opinion that the national policy with regard to transportation should have in view the development and maintenance of an adequate system of rail, water, and highway transportation, with full cooperative service of all agencies that will contribute to its economy and efficiency.

NEGATIVE ARGUMENT

National policy.—The committee has attempted to define a national policy with regard to transportation. It may, however, well be questioned whether private initiative and the free play of economic forces will not produce a sounder development than can be had by any attempt to work out in advance a comprehensive policy on theoretical bases.

Losses through car shortage.—For example, there is nothing to prove that if there had been adequate access to markets in the fall of 1922 agriculture and industry would not have sustained even greater losses than they did because of the shortage of transportation. There are many indications that restricted transportation at that time prevented glutting of the markets. It is inevitable that economic processes should sometimes offer such alternatives and it is fairer to all concerned that these processes be allowed to work themselves out naturally.

Peak load.—There is no evidence that any system of transportation that could, as a practical matter, be provided would completely prevent peak-load congestions. Estimates, such as those given in the committee's report, must be largely a matter of conjecture and any attempt made to follow them might, on the one hand, tend to restrict development in some localities and, on the other hand, promote the construction of unnecessary facilities in other localities. The present transportation plant has, in general, worked well and carried the traffic successfully. The same influences that have promoted its development in the past should be able to take care of future requirements for expansion.

Competition, not cooperation, natural.—The proposal that efforts should be made to promote coordination and cooperation between the railways, the waterways and the highway carriers is also contrary to natural tendencies. Each agency of transportation should be permitted to develop in response to any demand for transportation, under free competition, with the survival of the fittest. There is an inherent conflict of interests between the different types of carriers and it is unfair to suggest that any agency should give up traffic which it has developed through its own efforts. Left to their own initiative, the different agencies will cooperate as far as it is desirable and in their own interests, and it is very doubtful whether any efforts of regulating commissions or other public or semi-public bodies could materially influence their action.

Waterways.—There are serious dobuts as to the usefulness of inland waterways, and the effort to develop them by promoting their coordination with the railways may be largely a waste of effort.

New agencies.—The general introduction of any new agency such as the motor truck has a serious influence upon the channels of trade and upon property values of established businesses. Any artificial stimulation of the use of such instrumentalities would tend further to upset existing conditions.

2. THE TRANSPORTATION ACT, 1920

The committee recommends that there be no change in the important principles of the transportation act until after further experience.

NEGATIVE ARGUMENT

Transportation act.—The underlying principles of the transportation act are wrong, being based on the conception that transportation should be subjected to a regulation which the Supreme Court has called a fostering guardianship instead of regulation to prevent unreasonable rates and to stop discrimination. Under the earlier regulation the railroads were protected by their constitutional rights against confiscatory rates, and the public was protected against unreasonable rates. Out of rates coming between these extremes a good part of the larger transportation system in the world has been constructed.

Section 15a.—While it is recognized that section 15a does not constitute a guaranty in the usual sense, yet it does place the railroads in a different situation from the farmer and the business man, the income return to the railroads being largely assured, as well as limited, through the Government regulation of rates. Such interference with incentive to individual effort is undesirable.

Economic laws.—The provisions of section 15a violate economic laws because they would apparently require rates to be increased in times of business depression when there is a minimum demand for transportation, and to be decreased in times of great prosperity when the demand is at its maximum. The railroads individually are to earn the fixed return if they can, but if they do not, they are

not permitted, except to a limited extent for special purposes, to recoup themselves out of earnings in excess of the permissive rate earned in more prosperous times.

Railroad credit.—Section 15a, according to the committee, is necessary to the restoration of railroad credit to enable them to obtain new money for needed facilities. Investors in railroad securities, however, do not consider securities as a class; they study the situation of the particular security in which they are asked to invest. Unless the margin of earnings is sufficiently ample to safeguard that security during lean periods, the security is discriminated against. Money can not be attracted to the railroad industry if the earnings are limited in good times and there is no guarantee against loss in poor times.

State regulation—Roads' best years.—The claim made that the State regulatory bodies have often made it impossible for the railroads to earn a fair return has been given altogether too much credence. Only about 15 per cent of the traffic of the country is intrastate; the other 85 per cent has long been subject to Federal regulation and for years the law has been that when it was proven that State rates were placing an undue burden upon or unjustly discriminating against interstate commerce, the Federal commission could require the elimination of the discrimination. The three best years our railroads ever had were those just prior to Federal control and at that time our dual system of regulation was in full sway. All that is needed to make our carriers prosper is an abundance of traffic. This is conclusively demonstrated by the trend of their earnings during the past year. So long as we have a fixed statutory rate of return, the railroads will not feel free to readjust rates. Naturally they are not inclined to change any rates, the measure of which has been fixed by the commission in its attempt to meet this requirement of the law. The welfare of our industries and the railroads demands sufficient elasticity of the rate structure to meet the requirements of constantly changing conditions.

The railroads have a constitutional right to earn a fair return, irrespective of the provisions of the law, and no legislation regarding it is necessary. This constitutional right the courts have recognized in important cases.

Securities.—The control by the Interstate Commission of the issue of railway securities and the application to be made of the proceeds thereof, is also a violation of the principle of private initiative. This control, in effect, places in the hands of the Federal commission the power to determine how railroad property shall be developed and thus materially interferes with the successful growth of these properties.

Consolidation.—Another interference with the freedom of developments of the transportation system under private initiative is found in the provisions of the transportation act relating to railroad consolidation. The most imp rtant objections to this part of the new legislation may be stated as follows:

1. There should bd no relaxation of the rule that competition must be fully preserved, and in no case should consolidation of parallel competitive lines be allowed.
2. No general redistribution of railway properties can be brought about without changing seriously the existing routes and channels of trade and commerce.
3. It is impossible to rearrange the railway properties so as to produce systems of equal strength, operating at the same cost, and earning the same rate of return. The larger the proposed systems, the more difficult will it be to equalize these factors.
4. No important economies of operation can be brought about by consolidation. On the other hand, looser supervision will probably increase operating costs.
5. A few great railway systems will produce an undue centralization of power in a few hands. Commercial development will be largely controlled by a small handful of railway magnates.
6. Great systems, 20,000 miles and over, if financially successful, will be powerful, arrogant and indifferent to shippers' needs.
7. Such systems, if not successful, will produce a far more serious problem than any we now have. There will exist then no power, but the Government, adequate to take over such properties.
8. The plan is nothing but a gigantic experiment of doubtful results. The promise of benefit is vague and uncertain; the probability of injurious results is great.
9. There is no sufficient information available for undertaking the consolidation of railways upon a wholesale scale.

In view of all these facts it is evident that the public interest will be promoted best by repeal of the consolidation provisions of the transportation act and adherence to the policy tried out and justified over many years of experience before the enactment of the legislation of 1920.

Labor Board.—The labor provisions of the transportation act should be repealed because the Railroad Labor Board has not been able to establish a satisfactory method for the settlement of railroad labor disputes. While it has exercised an influence that may have led to the avoidance of some strikes, it did not prevent the shopmen's strike of 1922. Its existence operates to hamper the initiative of the employers and the employees on individual railroads to reach agreement on questions in dispute; in fact, it acts as an invitation to submit to the board trivial disputes which would otherwise be handled by local committees. Given the opportunity, employers and employees may be expected to work out their differences more satisfactorily under some such system as was embodied in the Newlands Act.

The committee, while asserting that the provisions of the transportation act are sound and practical, urges that there be no change until after further experience. The act has, however, been in effect for four years. This is a sufficient time for a fair test. There has now been sufficient experience to warrant a thorough-going scrutiny of the provisions of the transportation act and a reweighing of each important principle in the light of its results in application.

3. RECAPTURE OF EXCESS EARNINGS

The committee believes that the principle of recapture of excess railroad earnings is in the public interest as an essential part of the rule of rate making.

NEGATIVE ARGUMENT

Recapture clause.—While the Supreme Court has decided in favor of the constitutionality of the recapture provisions of the transportation act, it does not follow that those provisions constitute a sound policy. To take from one business enterprise part of the results of its energy, of its economy, or even of the favorable circumstances which it may have created or taken advantage of through exercise of foresight and energy, in order to permit of such rate regulation as will be more favorable to other business enterprises than would be possible without the recapture provision, is paternalistic.

Effective initiative.—The effect of the recapture clause, as in the case of all such measures, can be only to suppress enterprise and energy. To the extent that any business knows that it is to be deprived of the fruit of its efforts, by just that much will its efforts be checked. That is a bad thing for the business and for those depending on it for service. It is especially bad for a railroad, for the public has to depend to a peculiar degree, on the railroads. Any curtailment of their energy and their efforts to grow is a matter for public regret.

Step by step the railroads are becoming more and more government administered. There is becoming less and less room for business enterprise and individual effort and less and less hope for reward from it. It is not especially important to the railroads how they are administered, at least their selfish interest is a phase of the matter in which we are not particularly interested, but it is important to the commerce of the country that has to depend on transportation what policies govern our railroads and whether those policies conduce to development and efficiency.

Effect on rates—Use of excess.—The recapture clause unduly taxes the business of the country by maintaining rates at a higher level than would be allowed if the entire revenue remained in the hands of the railroads. It is very doubtful whether the funds paid in to the commission will, in fact, be profitably utilized for the expansion of the transportation plant, particularly as the act prescribes that they shall be lent only when "the prospective earning power of the applicant and the character and value of the security offered are such as to furnish reasonable assurance of the applicant's ability to repay the loan within the time fixed therefor." Applicants able to furnish such assurance would doubtless be able to obtain ample credit from private sources, while indigent carriers would not be able to benefit from the recapture provision, and furthermore, the interest from loans and rentals contemplated will go to the public treasury and not to those who have paid the higher railroad rates. The recapture clause has not even the virtue that the proceeds go to put the weak roads on the paying basis that is desirable in the public interest to maintain all transportation on a high plan of efficiency. It penalizes the strong road without materially aiding the weak.

99790—26——17

Wasteful expenditures.—The recapture clause also results in wastefulness through excessive expenditures for overmaintenance on the part of roads earning enough to subject them to the recapture provision, and practically, it is beyond the power of the Interstate Commerce Commission to check this over-maintenance. In other words, it has the same effect on stimulating wasteful expenditure as the excess-profits tax which the Federal Government for a time kept in force after the war was ended.

The whole influence of the recapture provision constitutes an interference with the principles that should govern private business, producing an artificial condition that tends to retard individual initiative and incentive.

4. SUPPLEMENTARY LEGISLATION TO FACILITATE CONSOLIDATION

In order that full opportunity may be given the railroads to consolidate by voluntary action subject to the approval of the Interstate Commerce Commission, the committee recommends the adoption of appropriate supplementary legislation, in harmony with the general principles of the transportation act, to facilitate such consolidation.

NEGATIVE ARGUMENT

Facilitating consolidation.—The committee bases its argument on the assumption that railroad consolidation as outlined in the transportation act is desirable in the public interest. This is an unwarranted assumption for reasons already stated above.

Management problem.—The committee has presented in its report statements purporting to show that by the application of methods developed in large American corporations, the consolidated railroad companies can be made no less efficient and responsive to local needs than smaller companies. This important point can hardly be said to have been proved and rests largely in the field of opinion.

Practical difficulties.—Furthermore, even were consolidations shown to be desirable, the committee is hardly warranted in its assumption that railroads can be consolidated without injustice to the owners or the public and that, with the removal of legal obstacles, consolidation is likely to proceed. On the contrary there are many indications that to accomplish consolidation would require compulsion which, as the committee indicates, is a very intricate and involved proposition, bringing up constitutional questions.

Repeal.—The committee's proposal that supplementary legislation should be passed to perfect the provisions of the transportation act respecting consolidations is in itself an admission of inadequacy of that act. The consolidation provisions can hardly be said to have had lesser trial than the other provisions of the act. To undertake to modify or supplement the consolidation provisions would open up the whole field of railroad legislation. The only remedy is in the complete repeal of those provisions.

Minority shareholders.—The proposals suggested regarding the treatment of minority stockholders are also of doubtful wisdom. Such stockholders should be protected against any reorganization which would compel them to surrender securities of known value for securities of speculative value.

Taxes.—The proposal to relieve consolidations of the taxes ordinarily levied on such mergers is an indication that the advantages to the stockholders anticipated from consolidation are not such as to be convincing; otherwise, there would be no such appeal for relief from these taxes.

Stimulation.—That consolidations contemplated are not a natural process is shown by the suggestions included in the committee's report that there should be a special bureau of the Interstate Commerce Commission and an organization committee for each consolidated system to pass upon and assist in bringing about the consolidations. This would involve further unnecessary interference on the part of the Government with private business.

Statutory construction.—The consolidation provision prescribing that competition shall be preserved and the existing routes and channels of trade maintained amounts to a mandate against the consolidation of all the railroads into a few systems and is a clear recognition of the fact that the whole structure of American commerce and transportation is built upon competition. While there has been, to a considerable extent, substitution of regulation for competition in rates, competition of railroads is still a controlling factor in most of the important rate structures in the United States. The commission's records abound in decisions in which it is pointed out that the carriers may and do maintain rate structures through stress of competition which the commission, as a regulating body, could not undertake to establish or maintain. Restriction of important railroad competition through consolidation would certainly have a very far reaching effect upon the competitive rate adjustments of this country. Any discussion of the importance of competition seems unnecessary since Congress has expressly provided that in consolidation of railroads "competition shall be preserved as fully as possible and, wherever practicable, the existing routes and channels of trade and commerce shall be maintained."

Centralization.—If all of the steam railroads of the country were to be consolidated into substantially 19 mammoth systems, as contemplated by the tentative report of the Interstate Commerce Commission, it would tend to greater centralization of industry and destruction of present channels of trade, which have been developed over a long period of years and at great expense to the numerous industries throughout the country.

Present large systems.—The existing railroad trunk systems are self-sufficient, are properly located, are already large enough and any general consolidation would do more harm than good.

Valuation necessary.—The committee proposes legislation evidently intended to expedite consolidation. Here it should be pointed out that the carrying out of consolidation must, in accordance with the law, await the completion of the valuation of railroads, a process which is likely to require many years. In view of the inevitable delay from this cause no urgency is seen with regard to the other parts of the consolidation program.

Difficulty in uniform costs.—One of the difficulties anticipated in connection with consolidation is the establishment of systems in which "the cost of transportation as between competitive systems and as related to the values of the properties through which the service is rendered shall be the same, so far as practicable, so that these systems can employ uniform rates in the movement of competitive traffic and under efficient management earn substantially the same rate of return upon the value of their respective railway properties." It does not appear that the supplementary legislation proposed by the committee would contribute to the solution of this difficulty. Even if it were possible to establish the systems contemplated, having for the time being a uniform rate of return, the experience of the past clearly demonstrates that such uniform rate of return would not long continue. The present efficient operation and prosperous condition of certain of our leading systems to-day may be contrasted with conditions on those same lines 10, 20, or 30 years ago, while the position to-day of some of the big systems which are weak financially may also be contrasted with the strong position of those same roads in the past.

Under these conditions it would only be a short time before some of the new consolidated systems would become weak and require further assistance. The obvious source from which such assistance would be sought is the Government, and Government aid for the weak roads would be a dangerous step in the direction of Government ownership of all the railroads.

Consolidation by private initiative.—In view of all the uncertainties governing any stimulated consolidation, it is believed to be far safer to leave the further grouping of the railroads to their own initiative and the processes of natural evolution.

5. JOINT USE OF TERMINALS

The committee recommends that the policy of connecting and coordinating terminal facilities, particularly in congested centers, and providing for their joint use on terms prescribed by the Interstate Commerce Commission, be applied as rapidly as practicable.

NEGATIVE ARGUMENT

Terminals.—The suggestion that individual railroads should open to other carriers terminal facilities which they have established at important traffic centers is a threat against the preservation of competition. To do this would tend to discourage individual effort and initiative by depriving such railroads of the fruits of their enterprise, superior judgment, foresight and the advance provisions they may have made for the growing needs of their traffic in such localities.

Terminal advantages.—Railroad investment in terminal properties embraces strategic advantages that outweigh their cost. A railroad with its own tracks is in position to secure a large percentage of the total traffic for a maximum haul over its own lines. It is not to be expected that railroad companies with adequate terminals will willingly admit other railroads to an equal use of such facilities.

If deprived of the opportunity to maintain the competitive superiority, which it may have through the possession of superior terminals, the individual railroad

will lose the incentive to improve its terminal facilities. Furthermore, while at present a railroad with inferior terminal facilities is often stimulated by the necessities of competition to furnish superior line service so as to offset terminal inferiority, this stimulus would largely be eliminated by the joint use of terminals.

Capacity.—Again, terminal facilities generally have been provided for the accommodation of the traffic of the company or companies which constructed them and have been designed with reference to the reasonable requirements of such traffic. They are not intended or adequate for the use of additional railroads. If all existing terminal stations and team tracks were thrown open to general use of all railroads reaching a large terminal area, the result would be to overload these terminals, delay transportation, increase terminal expenses and decrease terminal efficiency. Joint use of trackage in such large railroad centers will involve insuperable difficulties of management by increasing the complexities of operation and dividing responsibility. Anything that tends to increase the difficulties of operation and to dealy the movement of traffic would increase terminal expenses and be detrimental to the shipping public.

Present joint use.—According to a report of the Bureau of Railway Economics, prepared in 1921, there were then in joint use by railroad companies, 245 engine terminals, 1,006 freight stations, 585 switch yards, and 3,179 passenger stations.

The report further stated that 9,646 miles of railroad line and 16,141 miles of tracks were jointly used, and that 125 switching and terminal companies furnished trackage rights to 281 railroads. This shows that the possibilities of joint use of terminals have not been overlooked by the railroads.

Differences in terminal problems.—There is, however, so much dissimilarity between terminal areas that each situation must be studied separately and no general rules can be formulated for the common use of terminal facilities in different terminal areas. Railroad operations in a large terminal area are very complex and require the exercise of all the skill and ingenuity of men who have devoted many years to this important part of railroad transportation. The committee suggests that the studies of the possibilities of joint use of terminals should be carried on by public authorities, but terminal operations constitute such a specialized field of railroad service that only the men who actually perform or supervise the operations of a particular terminal are competent to determine whether any, and if so, what additional railroads could be admitted to the common use of such terminal without unreasonably interfering with its efficient operation. The problem of the joint use of existing terminals should be left in the hands of those best fitted to solve it, namely, the railroad companies and their experts in terminal operations.

6. RAILROAD REGULATION BY ADMINISTRATIVE AGENCIES

The committee believes that the public regulation of common carriers should be carried out through the properly constituted Federal and State administrative agencies, provided with adequate facilities to make their work prompt and effective, rather than by inelastic legislation dealing with rates or other problems.

NEGATIVE ARGUMENT

Regulating agencies.—The committee assumes that an elaborate system of regulation of railroads is necessary but does not give any adequate reason. On the other hand, it does not take into account the interference with private rights and desirable initiative which such regulation would entail.

Another method.—An alternative meriting careful consideration would be to enact suitable laws to govern the practice of the railway business and then leave it to the courts to decide in case any carrier should be charged with infringing such laws. In this way the railroad managers could act under a clearly defined and relatively permanent régime without being required to spend a large part of their time in hearings before regulating commissions and without constantly having to readjust their operations to comply with a long series of administrative decisions.

Judicial questions.—The authority of the Interstate Commerce Commission to determine the value of the carrier's property, to decide on what shall be a fair return and to pass upon the fairness of rates constitutes an infringement upon the power of the courts, while its authority to control capital issues and expenditures is an equal infringement upon the power and discretion that should be in the hands of the railroad management which should be solely responsible for the success or failure of the railroad enterprises.

Commission government.—To place such a large measure of control of the vitally important agencies of transportation in the hands of administrative commissions would tend to deprive the people of the right to decide these important questions of national or state policy through their elected representatives. Commission action applied to specific cases often fails to meet public need and the direct remedy obviously is through the legislative authority.

Size of task of Interstate Commerce Commission.—The committee's suggestion for the improvement of the efficiency of the Interstate Commerce Commission by regional organization or otherwise is a frank recognition of the serious difficulties, if not the impossibilities, of satisfactory handling by an administrative commission of the multitude of duties with which that commission is charged. Any attempt to enlarge the commission or give it a regional organization would involve great danger of further extending its regulatory activities, making them more complicated, rendering its work less effective, and placing upon the public still heavier charges for the costs of this overhead administration.

7. READJUSTMENT OF RELATIVE FREIGHT RATE SCHEDULES

The committee believes that the present situation demands a readjustment of relative freight rates rather than a general reduction of all freight rates; and recommends that such readjustment be prosecuted by the existing agencies in pursuance of established methods with the greatest possible dispatch.

NEGATIVE ARGUMENT

Rates.—That the railroads have been receiving a return below that which the Interstate Commerce Commission has determined as fair does not prove that railroad rates in the United States are not, as a whole, unreasonably high. Any such assumption overlooks the all-important element of railway costs.

Operating costs.—There are many opportunities for reducing railway costs by various obvious measures, notably through a reversal of the policy with regard to railroad labor that has been in effect since the passage of the Adamson law, through needed action to reduce the price of coal, and through reduction of the heavy taxation imposed upon the carriers under the prevailing public policy. Until railroad costs and rates have been reduced there can not be a return to normal conditions in many lines of production and distribution, and until such return to normal is accomplished these processes will inevitably be hindered.

Price levels.—The committee's suggestion that the reasonableness of rates should be judged by comparison with pre-war rates in relation to commodity prices is one which, if given general application throughout the economic structure and pursued to its logical conclusion, would effectively prevent a return to a more normal relation of prices to the fundamental units of value as fixed by the gold standard. A contrary policy should be followed by taking advantage of every opportunity in the various economic fields to bring back prices to normal levels and thus restore healthy conditions.

Rates elsewhere.—Similarly, there is little weight in the committee's suggestion that comparison with foreign rates is favorable to the American railroads. The great difference in physical conditions, length of haul, types of equipment and operating practices constitutes a great natural advantage to the American railroad, and the American public is entitled to have these advantages reflected in in the lower transportation costs necessary to the continued development of the country. The rate situation must be viewed on its merits rather than in relation to any former or outside standards.

Basis for rate making.—Though the rate structure of this country may not be founded on theories acceptable to the academic mind trained in mathematic formulas, it rests on a basis of experience and embodies the practical results of competition. There may be many rates that ought to be corrected, but the fundamental fact is that they were made by business men and made to move goods. If this basis of competition were abandoned and a cost-of-service basis substituted with disregard of the value of the service and what the traffic will bear, it would not only involve danger of substantially increased rate levels, but also diversion of tonnage from the railroads, isolation of industry, relegation and limitation of commercial and industrial centers to their own back-yard territory, and consequent loss of revenue to the railroads.

Time for revision.—If a revision in the freight rate structure were desirable from any point of view, the present would be a bad time to make it, because of the uncertainties of the existing business situation. The revision of the rate

structure would cause disruption of business as between different localities. It would change the relationships between the various cities. It would work detrimentally against business as a whole and against different communities.

Effect of present rates.—The rate structure, as it is, moved last year by far the greatest volume of traffic ever handled by our railroads, and there appears to be no demand on the part of the shipping public for a general revision of rate relationships. Rates should remain as they are until a sufficient time has elapsed to show beyond a doubt what ought to be done with them. If there is one thing worse than rates that are too high, it is a policy of continually tampering with them.

Effect of proposed changes.—The committee itself, while proposing certain rate readjustments, admits that the amounts that may be involved would be limited because of the relatively small amount of business concerned. There is, however, danger in the committee's proposal because it may tend to give rise to hopes in the minds of certain classes of our people, particularly the agricultural class, that the readjustments might materially reduce freight rates on the products in which they are interested. Such hopes would be illusory, especially in view of the fact that in many cases the railroads handling this agricultural traffic are dependent to a large measure upon it for their revenues and any material reduction of these rates would throw them into receivership.

While the committee in its report emphasizes the technical and delicate nature of the questions involved in rate readjustments, and suggests that they be made by the existing agencies in pursuance of established methods, it nevertheless goes on to propose expedited action. Such action, however, in dealing with such sensitive adjustments, would inevitably unsettle business conditions, and the only safe method is to leave the entire matter of readjustment of freight rates to individual action before the properly constituted regulatory commissions.

8. COMPREHENSIVE PLAN FOR WATERWAY DEVELOPMENT

The committee recommends that Congress be urged to direct the United States Army Engineers to make a comprehensive survey of the waterways of the country as a whole and in their relation to other transportation agencies, and to recommend a definite plan and schedule of priorities for waterway development.

NEGATIVE ARGUMENT

Inland waterways.—While the committee recognizes that our inland waterways are carrying little more traffic than 25 years ago, its report does not show how insignificant a portion of the total commerce of the country is carried on these waterways.

Traffic.—The commercial statistics of the War Department and the reports of the Interstate Commerce Commission give the following figures for the commerce on inland rivers and canals and on the railroads, respectively:

	Tons
Commerce on rivers, canals, and connecting channels: [1]	
1920	43, 187, 893
1921	40, 045, 556
1922	38, 490, 676
Commerce carried on steam railroads, excluding tonnage received from connecting roads:	
1920	1, 363, 000, 000
1921	1, 018, 000, 000
1922	1, 112, 000, 000

Local traffic.—Of this approximately 40,000,000 tons of commerce on rivers and canals, nearly 15,000,000 tons is carried a relatively short distance on the Monongahela River in the Pittsburgh district, so that on all the other rivers and canals constituting the inland waterway system of the country, there is only about 25,000,000 tons of commerce per annum, or 2 per cent as much traffic as is handled by the railroads

Expenditures on waterways.—Hundreds of millions of dollars of Federal money have been expended on development of these inland waterways, without any material increase in their use. It is a serious question as to whether any more public money should be invested in such unprofitable enterprises. The railways

[1] These figures are exclusive of traffic on the Great Lakes which, in view of the type of carriers employed, is to be compared with ocean commerce rather than commerce on inland rivers and canals.

of the country, on the other hand, have shown great adaptability and capacity for expansion. The money needed to provide navigable waterways if expended for railway expansion would, it is believed, give greater traffic capacity for the same expenditure.

Disadvantages of waterways.—The committee enumerates several possible explanations for the relatively small traffic on the waterways, but does not mention their inherent disadvantages. It should be pointed out that the waterways reach only limited parts of the country and can not constitute a complete, uniform system serving a universal need, as do the railways. The waterways, in many instances, are so located that they do not constitute lines of naturally heavy traffic (except in the case of the Great Lakes and some few of the rivers and canals). They are usually inconvenient of access and require one or more transfers of freight. Their traffic is far more subject than rail traffic to the hazards of delay, accident, and damage in transit and, furthermore, is particularly subject to complete interruption through ice, floods or drought. The waterway channels are often so winding that the distance by the waterway greatly exceeds that of the rail route. It may well be questioned whether the waterways, as a whole, have properly any large part in the national transportation system.

Useful waterways.—Some waterways have proven useful and carry traffic on a large scale. Waterways susceptible of such development are not numerous, and no general survey of the waterways of the country as a whole is necessary in order to permit successful treatment of these exceptional cases. Each waterway project should be treated on its own merits, regardless of other unrelated projects, and those that merit improvement should not be required to wait upon a general plan.

Survey.—Were such a nation-wide survey of waterways justified, it should not be assigned to a body of technical engineers who have been engaged in the design and construction of particular projects and have had little commercial experience. It would be preferable to entrust such a survey to a board or a commission of business men and transportation experts, with suitable engineering assistance.

9. MISSISSIPPI-WARRIOR BARGE LINES

The committee recommends that, to determine more fully the possibilities of inland waterway transport under private operation, the Secretary of War be given authority and funds to operate the barge lines on the Mississippi and Warrior Rivers in accordance with good commercial practice.

NEGATIVE ARGUMENT

Barge lines.—The following financial record of the Mississippi-Warrior barge lines, taken from the latest Annual Report of the Chief of Inland and Coastwise Waterways Service of the War Department, is the best evidence of the hazardous character of the operation, a test of which is being attempted by this experiment:

Performance record of Mississippi Line

	Tonnage	Operating revenues	Operating expenses	Operating deficit	Net deficit
September, 1918 to June 30, 1919	79, 024	$277, 454	$702, 821	$425, 368	$422, 168
Six months ended—					
Dec. 31, 1919	49, 104	167, 205	436, 599	269, 394	266, 561
June 30, 1920	86, 375	366, 555	710, 590	344, 035	341, 473
Dec. 31, 1920	74, 327	335, 664	741, 648	405, 985	406, 861
June 30, 1921	162, 941	721, 732	815, 087	93, 355	95, 776
Dec. 31, 1921	280, 326	1, 069, 593	1, 105, 119	35, 526	37, 663
June 30, 1922	375, 463	1, 488, 361	1, 327, 345	[1] 161, 016	[1] 158, 690
Dec. 31, 1922	224, 206	761, 121	1, 395, 687	634, 565	638, 429
June 30, 1923	370, 909	1, 255, 030	1, 238, 958	[1] 16, 072	[1] 13, 633
Total	1, 702, 675	6, 442, 715	8, 473, 854	2, 031, 140	2, 036, 608

[1] Profit.

Performance record of Warrior Line

	Tonnage	Operating revenues	Operating expenses	Operating deficit	Net deficit
September, 1918 to June 30, 1919		$99,685	$149,682	$49,996	$61,469
Six months ended—					
Dec. 31, 1919		125,426	256,989	131,562	141,004
June 30, 1920		166,907	362,691	195,785	207,645
Dec. 31, 1920		202,922	402,404	199,482	211,322
June 30, 1921		242,300	492,750	250,450	268,276
Dec. 31, 1921		220,100	488,222	268,122	284,358
June 30, 1922		241,891	419,504	177,613	194,088
Dec. 31, 1922	151,829	263,746	567,782	304,036	322,572
June 30, 1923	134,194	216,004	524,103	308,099	327,010
Total		1,778,981	3,664,127	1,885,145	2,017,744

Private operations.—While it is claimed by those operating the barge lines that unfavorable conditions, inadequate equipment, and other disadvantages have produced the unfavorable financial results up to the present and that in the future a change for the better may be expected, there seems little hope that these operations will ever become so successful as to attract private capital. The Government is thus placed in the position of devoting large sums to an experiment which has little hope of success.

If the rail carriers paralleling the Mississippi River were unable to handle this traffic at reasonable rates, there might be more justification for the development of the Mississippi service, but no evidence has been put forward of any inadequacy of the rail service.

Commercial basis.—The proposal of the committee to allow the barge lines to be operated in accordance with commercial practice implies either the contribution of public money to furnish the desirable capital or else an effort on the part of the Government authorities to induce private capital to invest in an acknowledgedly hazardous enterprise.

Results of experiment.—The proposed test will not promote private operation in any event. If the test proves a failure, the Government will sustain a heavy loss and the service will ultimately be discontinued, while if it proves a success, political pressure will be exerted to keep the lines under Government operation. Furthermore, conditions are such that even with the funds available, the Government would hardly be able to follow the lines of good commercial practice.

Government operation.—Operation by the Government of such a large scale enterprise is undesirable, producing a competition with private operators which the latter are unable to meet and effectively driving private lines from the routes covered by the Government service. Even were such a test successful on the Mississippi and Warrior Rivers, it would be of no general value because it would not prove that a similar experiment would prove successful anywhere else.

10. DEVELOPMENT OF WATERWAY SERVICE

The committee recommends that waterway service, including through rail-and water routes and rates with suitable divisions of rates between the two types of carrier, be facilitated by public and private agencies wherever economically warranted and in the public interest.

NEGATIVE ARGUMENT

Waterway services.—The committee's concluding statement that "to bring about a large use of inland waterways, a cooperative effort of public authorities, business enterprise, and the shipping public is required," shows that the committee's proposal is contrary to natural tendencies and unlikely to be either feasible or profitable. If waterway service were desirable, private initiative would long since have developed it on a large scale.

Competition natural.—The committee proposes that the waterways shall depend upon the establishment of a free exchange of traffic between the railroads and the waterways and contemplates a substitution of friendly relations in the place of hostile competition. This is also contrary to natural tendencies as it is only in rare cases that the railway turning over traffic to a waterway will not be depriving itself of a substantial portion of a profitable haul.

Noncompetitive rates.—Waterway advocates frequently assume that if a waterway could profitably handle traffic at, or slightly below, noncompetitive railway rates for the same distance, it should be entitled to the business. This point of view overlooks a fundamental principle of rate making recognized by law in the fourth section of the interstate commerce act. The act contemplates that rail carriers may lower their rates to meet water competition provided that the resulting rates are reasonably compensatory for the service performed.

Costs.—There is no evidence that the costs of inland water transportation in this country are ever likely to be sufficiently under rail costs to offset the inconvenience, complication, and expense in both fixed and operating charges necessary to the utilization of a rail-water route. Comparisons with the much used waterways of Europe are misleading, as European railways are far behind those of the United States in development of large car and train load movement with resulting low costs, while, on the other hand, low European labor costs are peculiarly favorable to slow moving water traffic.

Advantages of water carriers.—Even were water rates in this country show to be in general sufficiently lower to justify such combined service, it must be remembered that the water carrier pays nothing toward the construction or maintenance of the waterway over which it travels. In considering the public interest in most economical transportation, all amounts paid from the public treasury, as well as those devoted by States, municipalities, and other local organizations for the improvement and maintenance of waterways, ports, and terminals should be prorated against the traffic on the waterway. The day has gone when such public improvements can be justified on account of their influence in controlling rail rates, the latter now being fully and effectively controlled by the regulating commissions.

Unfairness.—Furthermore, the provision by the public of waterways for free use of water carriers constitutes an unfair element of competition against the rail competitors and thus tends to restrict the fair return to the carriers and to interfere with incentive to individual initiative on their part and the improvement of their service to the public. Any suggestion that there be divisions of rates on any other basis than the sum of the total rail rate plus the total water rate, is unfair to the rail carriers as it would seriously impair the earning power of existing rail lines not so placed as to participate in the joint rail and water hauls. Furthermore, it would seriously impair the commercial life of communities served by railroads but not directly served by waterways.

There has already been adequate experience to show that, with rare exceptions, waterway service is not capable of effective development, and any efforts on the part of the Federal Government, States, municipalities, chambers of commerce, and other commercial organizations, as well as the water carriers themselves, are likely to be wasted.

11. OPTIONAL STORE-DOOR COLLECTION AND DELIVERY

The committee recommends that store-door collection and delivery, at the option of the shipper, with reasonable separately itemized trucking charges in the published tariffs, be established as rapidly as practicable by agreement between the carriers and the shippers, beginning at the centers of greatest congestion.

NEGATIVE ARGUMENT

Store-door delivery.—Store-door collection and delivery has been in effect in at least two American cities in the past and has been abandoned. It is to-day available in certain large shipping centers in the United States but is comparatively little used. If it were as desirable both for the railroads and the shipping public as indicated by the committee, it is fair to assume that they would not have allowed it to be abandoned or fall into disuse.

Other experience no precedent.—That such a system is in effective use in England and Canada does not prove that it would be useful under the very different conditions prevailing in the United States. In England the railroads themselves administer the service while in this country they are apparently reluctant to do so.

Railroads opposed.—Any attempt to organize a store-door collection and delivery service would meet with great difficulties. The railroads are universally opposed to going into the trucking business, and truckmen are not sufficiently organized to take up the work on the comprehensive scale required to make it effective. Store-door delivery would increase the difficulty of placing responsibility for loss and damage. It would be difficult and costly, if not impracticable to include in the published tariffs separately itemized trucking charges,

and since the jurisdiction of the Interstate Commerce Commission would extend over this trucking service there would inevitably be conflict between the commission and the local regulating authorities.

Goods changing ownership.—It does not appear from the committee's report how optional store-door delivery will help in the case of goods sold after their arrival at the terminal, if the option remains to the consignee to leave the goods in the car or at the station until he is ready to move them.

Facilities of shippers and receivers of freight.—Many shippers and consignees are not equipped to deliver and receive their goods on a fixed schedule as would be practically necessary in the working out of a store-door delivery system but must accommodate the shipment and receipt of their goods to the exigencies of their business operations, which are often conducted in cramped quarters without other receiving and delivering platform than the public sidewalks. A serious practical obstacle to store-door service exists in many cases through restriction to certain hours of the use of elevator service in loft and other buildings.

Outlying freight stations.—The proposal that the railroads should relocate their freight stations in outlying parts of the terminal area would involve controversies over the question of trucking charges, inasmuch as these charges would necessarily be greater than to and from the present stations and would, under the plan of the committee, have to be borne by the shipper. Shippers would obviously oppose the closing of near-by stations in the business district, and the advantage to the railroad of relocating the stations on less expensive outlying real estate would not materialize.

Trucking competition.—The operation of a store-door collection and delivery service implies a concentration of the business in one, or at most, a very limited number of trucking companies in each terminal center and these would tend to destroy competition in this most important element of the national transportation system.

12. MOTOR TRANSPORT AS AN AUXILIARY TO THE RAILWAY SERVICE

The committee believes that wherever experience indicates that it will be in the public interest regulatory bodies should facilitate the utilization of motor transport to replace uneconomical forms of rail service, to relieve yard and terminal congestion, and to extend existing steam and electric railway services.

NEGATIVE ARGUMENT

Indispensable rail facilities.—Some forms of rail service, both within and without the terminal area, while possibly uneconomical, are indispensable and can not be eliminated. Many businesses and industries have located their plants on rail lines and are dependent on the continuous and completed rail service they are now enjoying. Any proposed substitution of motor service to such plants would, in many cases, be impracticable on account of the lack of hard-surfaced streets, highways, and approaches. Besides this, there is a large investment in transfer facilities especially built to handle shipments into and out of railway cars which could only be made applicable to service utilizing the motor truck by the expenditure of amounts of capital so large as, in many cases, more than to offset any possible economies through such substitution.

Contracts.—Furthermore, rail facilities have often been provided as a result of formal or informal contract or assurance given by the railways prior to the establishment of the industrial plants on their lines and such undertakings on the part of the railroads must obviously be adhered to.

Lack of evidence.—While it is assumed that there are some rail services being performed that are uneconomical, there is little, if any, evidence to prove that such is the case. Any action such as is proposed ought to be postponed until fuller data is availble on which action can be based.

Street congestion.—The committee's suggestion is directed toward relief of congestion in the railway yards and terminals but does not sufficiently take unto account the fact that the substitution of motor trucks for any service now performed by freight cars within the terminal areas would inevitably tend to increase street congestion. It is not clear that congestion in the yards and terminals is any more serious than in the streets of our large cities.

Unprofitable services.—The committee's proposal that the railroads should be permitted to discontinue unprofitable service would, in many cases, be contrary to the public interest. A railroad is established as a system and it is not to be expected that every element of its service will be profitable. The disarrangements that would result from the substitution of motor for rail service are likely in many cases to have an adverse effect upon existing investments along the lines of such railroads made with a reasonable expectation that the railway would remain available as a permanent agency of public service.

Unreliability of trucks.—In many cases, because of weather conditions, failure of many districts to maintain their highways in passable condition, and the general uncertainty of motor operation, the motor truck is not a reliable substitute for the rail carrier.

Protection against truck competition.—The proposal that the railroads be protected against the competition of motor carriers is contrary to the principle of freedom of initiative and competition. Such action would tend towards the further extension of Government regulation to the ultimate detriment of business and the public. Furthermore, to extend steam and electric rail service by the utilization of motor transport under the control of the rail carriers will tend to give those carriers a monopoly of transportation and to destroy competition.

New problems.—A further practical reason in opposition to the extension of rail operations through the use of the motor vehicle lies in the very different character of these operations, the introduction of new labor problems and other difficulties tending to complicate further a business already extremely complex.

13. REGULATION OF MOTOR VEHICLE COMMON CARRIERS

The committee is of the opinion that the rates and services of motor common carriers, both freight and passenger, should be subject to regulation by the same State and Federal commissions which have jurisdiction over the operations of other common carriers, having particularly in view insuring to the public adequate, economical, and continuous service.

NEGATIVE ARGUMENT

Regulation of motor transport.—The full scope of motor transport has not yet been determined and any attempt to regulate its operation would greatly check its development, if it did not prove fatal, just as excessive regulation has in the past greatly hampered regulation of other carriers. The inevitable results of competition through the elimination of small and incapable motor operators is merely an incident in the development of a stabilized and healthy condition of the trucking industry. Any attempt to retard the working out of natural tendencies will delay the establishment of this industry on a sound and permanent basis. Free competition affords the public the best opportunity for low rates and attractive service.

Continuous service.—Since the public does not, in most sections of the country, remove the snow and keep the highways in good condition at all times, it is unfair to require motor carriers to give guaranteed continuous service. Nevertheless the public should not be deprived of the superior advantages motor transport can afford under favorable conditions.

Varied conditions.—The conditions under which motor vehicles operate are so varied that it would not be possible to exercise effective regulation of motor common carriers, nor is there any reason for discrimination against these particular motor vehicles and in favor of the private truck operated by the shipper or under contract with the shipper. The percentage of common carrier motor vehicles is so small that their regulation, if attempted, would accomplish relatively little.

Commissions now overburdened.—Furthermore, the proposal that the existing State and Federal commissions which have jurisdiction over the operation of other common carriers, should also take over the regulation of rates and service of motor common carriers, overlooks the already overburdened condition of these commissions. To avoid further delays and consequent disadvantage to carriers which they already regulate, there should be no addition to their duties.

Other motor vehicles.—Regulation of common carrier motor vehicles would be but a stepping stone to the complete regulation of all motor vehicles, already sufficiently regulated through size, weight, and speed restrictions. Rather than further extending the field of Government regulation to include this new agency of transportation—the motor truck—it would be far more profitable to adopt the principle heretofore recommended of reducing Government regulation to a minimum.

14. MAINTENANCE OF HIGHWAYS

The committee believes that, in addition to bearing an equitable share of the general tax burden, the road users should pay the entire cost of maintenance of highways through special taxes levied against them, these special taxes being applied exclusively to that purpose.

NEGATIVE ARGUMENT

Taxation of motor common carriers.—The committee's recommendation is a compromise and is satisfactory neither to those who feel that road users should pay not only for the cost of maintenance of highways but also for their construction, nor to those who hold the opposing view that the public highways should be both constructed and maintained by the public which provides other facilities for free public use—such as schools, parks, etc.—and, notably, in the field of transportation, pays for the improvement and maintenance of our navigable inland waterways. According to this latter view the owner of the motor vehicle has made his fair contribution to the public budget when he has paid the taxes on his property, his business and his income.

Competitive basis.—The proposal to have the road users pay the cost of maintenance of highways, through special taxes levied against them, does not place the motor vehicle on an equal footing and fair basis of competition with the steam and electric railways. The latter have not only to maintain their permanent way and structures but to construct them, either furnishing the capital therefor or borrowing it and assuming the fixed charges thereon.

Taxes on road users.—No practicable and equitable way of taxing road users in proportion to their use of the highways has as yet been devised. Various proposals have been made for gasoline taxes, taxes based on weight of vehicles, on width of the tire, etc., but no system or combination of systems proposed has as yet proved sufficiently convincing to secure general approval.

Wear on roads.—A serious fundamental difficulty is the lack of information as to the precise effect of the different types and weights of vehicles operated at different speeds on the various kinds of roads. The basis of taxation of road users and the provision for construction and maintenance of highways are subjects requiring further thorough study and consideration.

SPECIAL BULLETIN, CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, JUNE 9, 1924, ON REFERENDUM NO. 43.

The special committee on transportation of the chamber presented to the board of directors a report regarding transportation. The propositions set forth in this report were submitted to referendum vote on March 22, 1924, and the balloting closed on May 6, 1924. The present bulletin sets out the details of the votes which were cast in the referendum.

In this referendum 14 propositions were placed before the membership of the chamber. Under the by-laws the vote closed at midnight on May 6, 1924, when 641 organizations had filed ballots. These organizations are situated in 47 States, the District of Columbia, and Naples, Italy.

In the balloting each organization casts as many votes as it may have delegates at an annual meeting of the chamber. The number of delegates an organization may have depends upon the number of its members, but in no case falls below 1 or exceeds 10.

The propositions submitted and the results of the balloting on each proposition were as follows:

1. The committee recommends that the national transportation policy should aim at development and maintenance of an adequate system of rail, water, and highway transportation, with full cooperative service of all agencies that will contribute to economy and efficiency; 1,896½ votes in favor, 87½ votes opposed.

2. The committee recommends that the important principles of the transportation act of 1920 should be continued without change until there has been further experience; 1,875 votes in favor, 120 votes opposed.

3. The committee recommends that the principle of recapture of a fair proportion of excess railroad earnings should be maintained in the public interest as essential to the rule of rate making; 1,444 votes in favor, 504 votes opposed.

4. The committee recommends supplementary legislation in harmony with the general principles of the transportation act to facilitate consolidations by voluntary action subject to the approval of the Interstate Commerce Commission; 1,495½ votes in favor; 470½ votes opposed.

5. The committee recommends that the policy of connecting and coordinating terminal facilities, with provisions for joint use prescribed by the Interstate Commerce Commission, be applied as rapidly as practicable; 1,708½ votes in favor, 272½ votes opposed.

6. The committee recommends that, in place of any attempt to deal with rates and other problems of regulation of common carriers through legislation—necessarily inelastic—such problems be handled by properly constituted Federal and State administrative agencies; 1,921½ votes in favor, 67½ votes opposed.

7. The committee recommends that instead of any attempt at general reduction at the present time the existing administrative agencies, under their established methods and with all possible dispatch consistent with proper study and investigation, proceed with readjustment of relative freight rates; 1,709 votes in favor, 232 votes opposed.

8. The committee recommends that Congress should direct the Army Engineers to make a comprehensive survey and present a definite plan and schedule of priorities for waterway development; 1,743 votes in favor, 249 votes opposed.

9. The committee recommends that, to determine more fully the possibilities of inland waterway transport under private operation and thus enable the Government the sooner to dispose of the lines, the Secretary of War be given authority and funds to continue operation of the barge lines on the Mississippi and Warrior Rivers in accordance with good commercial practice; 1,440 votes in favor, 482 votes opposed.

10. The committee recommends that waterways service, including through rail-and-water routes and rates with suitable divisions of rates between the two types of carrier, be facilitated by public and private agencies wherever economically warranted and in the public interest; 1,753½ votes in favor, 199½ votes opposed.

11. The committee recommends that optional store-door collection and delivery with reasonable and separately itemized trucking charges in the published tariffs be established as rapidly as practicable by agreement between carriers and shippers, beginning at the centers of greatest congestion; 1,492½ votes in favor, 470½ votes opposed.

12. The committee recommends that wherever experience indicates that it will be in the public interest, regulatory bodies should facilitate the utilization of motor transport to replace uneconomical forms of rail service, to relieve yard and terminal congestion, and to extend existing steam and electric railway services; 1,629½ votes in favor, 318½ votes opposed.

13. The committee recommends that the rates and services of motor common carriers, both freight and passenger, should be subject to regulation by the State and Federal commissions which have jurisdiction over the operation of other common carriers having particularly in view insuring to the public adequate, economical and continuous service; 1,778½ votes in favor, 204½ votes opposed.

14. The committee recommends that in addition to bearing an equitable share of the general tax burden, the road users should pay the entire cost of maintenance of improved highways through special taxes levied against them, such special taxes being applied exclusively to that purpose; 1,326½ votes in favor, 512½ votes opposed.

Under the by-laws the chamber is committed on a proposition submitted to referendum by a two-thirds vote representing at least 20 States, provided at least one-third of the voting strength of the chamber has been polled.

The result of the final count is that the chamber is committed in favor of Proposition I to XIV, inclusive.

The detailed vote is tabulated on the pages which follow. Notes are added to indicate such definite action as members took in connection with their votes.

Name of organization	Questions submitted																											
	1		2		3		4		5		6		7		8		9		10		11		12		13		14	
	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against
ALABAMA																												
Birmingham Chamber of Commerce					7		7		7				7		7		7		7		7		7		7			7
Mobile Chamber of Commerce	8		8		8		8		8		8		8		8		8		8		8		8		8			8
Montgomery Chamber of Commerce	3					3	3		3		3		3		3		3		3		3		3		3			3
Tuscaloosa Chamber of Commerce	3		3		3		3		3		3		3		3		3		3		3		3		3			3

Name of organization	Questions submitted																											
	1		2		3		4		5		6		7		8		9		10		11		12		13		14	
	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against
ARIZONA																												
Phoenix Chamber of Commerce	3			3		3		3	3					3		3		3		3		3		3				
Tucson Chamber of Commerce	4		4		4		4		4		4		4		4		4		4		4		4		4			
ARKANSAS																												
El Dorado Chamber of Commerce (1)	7		7		7		7		7		7		7		7		7		7		7		7		7			7
Forest City Chamber of Commerce	1		1		1		1		1		1		1		1		1		1		1		1		1			1
Fort Smith Chamber of Commerce	3		3			3		3		3	3			3	3		3		3					3		3	
Little Rock Board of Commerce	10		10		10		10		10		10		10		10		10		10		10		10		10			
Pine Bluff Chamber of Commerce	3		3		3		3		3		3		3			3	3		3		3		3		3			
CALIFORNIA																												
Bakersfield Civic Commercial Association	3		3		3		3		3		3		3		3		3		3		3		3					3
El Centro Chamber of Commerce	1		1			1	1		1		1		1		1		1		1		1		1		1			
Fresno County Chamber of Commerce			5			5		5	5		5		5		5		5		5				5		5			
Hanford Board of Trade	2		2		2		2		2		2		2		2		2		2		2		2		2			
Holtville Chamber of Commerce	1		1		1		1		1		1		1		1		1		1		1		1		1			
Los Angeles:																												
Chamber of Commerce	10		10		10		10		10		10		10		10				10		10		10					
Commercial Board of Los Angeles (Inc.)	2		2		2			2	2		2		2		2		2		2		2		2		2			
Martinez Chamber of Commerce	1		1						1		1																	
Newport Beach: Orange County Harbor Chamber of Commerce	2				2		2		2		2			2	2		2		2				2		2			
Oakland Chamber of Commerce	9		9		9		9		9		9		9		9		9		9		9		9		9			
Ontario Chamber of Commerce	2		2		2		2		2		2		2		2		2		2		2		2		2			
Petaluma Chamber of Commerce	2		2		2		2		2		2		2		2		2		2		2		2		2			
Pomona Chamber of Commerce	3		3		3		3		3		3		3			3		3		3				3				3
Riverside Chamber of Commerce	3		3		3		3		3		3		3		3		3		3		3		3		3			
San Diego Chamber of Commerce	10		10		10		10		10		10		10		10		10		10		10		10		10			
San Francisco:																												
California Forest Protective Association	1		1			1	1		1		1		1						1				1		1			
California White and Sugar Pine Manufacturers Association	1		1			1	1		1		1		1				1		1		1		1		1			
Chamber of Commerce (2)	10		10			10		10		10	10			10	10				10		10		10		10			
San Jose Chamber of Commerce	4		4		4		4		4		4				4	4			4		4				4			4
Santa Rosa Chamber of Commerce	2		2		2		2		2		2		2		2		2		2		2		2		2			
South San Francisco Chamber of Commerce	1		1		1		1		1		1		1		1		1		1		1		1		1			
Stockton Chamber of Commerce	5			5		5		5		5		5		5		5		5		5	5		5					5
Van Nuys Chamber of Commerce		2		2		2		2	2		2		2		2				2		2		2		2			
Venice Chamber of Commerce		1		1		1		1		1		1		1		1		1		1		1		1		1		
Whittier Chamber of Commerce	1½	1½		3		3		3	1½	1½		3		3	1½	1½	1½	1½	1½	1½		3	1½	1½	1½	1½		3
COLORADO																												
Colorado Springs Chamber of Commerce	6		6		6		6		6		6		6		6		6		6		6		6		6			
Denver Chamber of Commerce	10		10		10		10		10		10		10		10				10		10	10			10			10
Fort Collins Chamber of Commerce	2		2		2			2	2		2		2			2	2				2		2		2			
Greeley Chamber of Commerce	3		3			3		3	3			3																
Pueblo Commerce Club	3		3		3		3		3		3		3			3		3	3			3	3					3
Walsenburg Chamber of Commerce	1		1		1		1		1		1		1		1		1		1		1		1		1			
CONNECTICUT																												
Ansonia Chamber of Commerce	1		1		1		1		1		1		1		1		1		1		1		1		1			
Bridgeport Manufacturers' Association, Inc	1		1		1		1		1		1		1		1		1		1		1		1		1			
Derby:																												
Business Men's Association	1		1			1	1		1		1		1		1		1		1		1		1		1			
Industrial Association of Lower Naugatuck Valley	1		1			1	1		1		1		1		1		1		1		1			1	1			
Greenwich Chamber of Commerce	2		2		2		2		2		2		2		2		2		2		2		2		2			
Hartford:																												
Chamber of Commerce, Incorporated	4		4		4		4		4		4		4			4	4		4		4		4		4			4
The Connecticut Chamber of Commerce	5		5			5	5			5	5		5		5		5		5		5		5					
Meriden Chamber of Commerce	3		3			3	3		3		3		3		3			3	3		3			3	3			3

Name of organization	Questions submitted																											
	1		2		3		4		5		6		7		8		9		10		11		12		13		14	
	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against
CONNECTICUT—continued																												
New Britain Chamber of Commerce	2		2			2	2		2		2		2		2			2	2			2	2			2		2
New Haven Chamber of Commerce (3)	10		10		10		10		10		10		10		10		10	10	10		10		10		10		5	5
New London Chamber of Commerce	1		1		1		1		1		1		1		1		1		1		1		1					
Norwalk: Lumber Dealers Association of Connecticut	1		1		1		1		1		1		1		1		1		1		1		1		1			
Norwich Chamber of Commerce, (Inc.) (4)	2		2			2		2	2		2		2		2			2	2			2	2			2		2
South Manchester Chamber of Commerce	2		2		2		2		2		2		2		2		2		2		2		2		2			
South Norwalk Board of Trade	1		1		1		1		1		1		1		1		1		1		1		1		1			
Stamford:																												
Manufacturers' Association	2		2		2		2						2		2		2		2		2		2		2			
The Stamford Chamber of Commerce (Inc.)	2		2			2		2	2		2			2	2		2		2		2		2		2			2
Waterbury Chamber of Commerce	4		4			4	4		4		4		4		4		4		4		4		4		4			
Woodbury: Connecticut Hardware Association	1		1		1		1		1		1		1		1		1		1		1		1		1			
DELAWARE																												
Wilmington Chamber of Commerce	3		3			3	3		3		3			3	3		3		3		3		3		3			
DISTRICT OF COLUMBIA																												
Washington:																												
Associated General Contractors of America	8		8		8		8		8		8		8		8		8		8		8		8		8		8	
Board of Trade	10		10		10		10		10		10		10		10		10		10		10		10		10			10
Chamber of Commerce	7		7		7		7		7		7		7		7		7		7		7		7		7			
National Coal Association	7		7		7		7		7		7		7		7		7		7		7		7		7			
National League of Commission Merchants of the United States	4		4		4		4		4		4		4		4		4		4		4		4		4			4
National Lumber Manufacturers Association	8		8				8				8				8													
National Retail Coal Merchants' Association	1		1		1		1		1		1		1		1		1		1		1		1		1			
Tanners Council of America		2		2		2		2		2	2		2		2		2		2		2		2		2			2
FLORIDA																												
Fort Lauderdale Chamber of Commerce		2		2		2		2	2		2			2	2		2		2		2		2		2			2
Jacksonville;																												
Chamber of Commerce	8		8				8		8		8		8		8				8				8		8		8	
Standard Container Manufacturers (5)	1		1		1		1		1		1		1		1		1		1		1		1		1			
Melbourne Chamber of Commerce	1		1			1		1	1		1		1		1		1		1		1		1		1			1
Miama Beach Chamber of Commerce	2		2		2		2		2		2		2		2		2		2		2		2					
Orlando Chamber of Commerce	5		5		5			5	5		5		5		5		5		5		5		5		5			
St. Petersburg Chamber of Commerce	8		8		8						8		8		8		8		8		8		8		8			
Tampa Board of Trade	3					3	3		3		3		3		3		3		3			3	3			3		
GEORGIA																												
Albany Chamber of Commerce	4		4			4	4			4	4		4		4		4		4		4		4			4		4
Atlanta;																												
Chamber of Commerce	10		10		10		10		10		10		10		10		10		10		10		10		10			
Southern Sash, Door and Millwork Manufacturers Association	1		1		1		1		1		1		1		1		1		1		1		1		1			
Augusta Board of Commerce	2		2			2	2		2		2		2		2		2		2		2			2	2			2
Carroll County Trade Board	1		1		1			1	1		1		1		1		1		1		1		1		1			
Gainesville Chamber of Commerce	2		2		2		2		2		2		2		2		2		2		2		2		2			
Griffin and Spalding Counties Chamber of Commerce	1		1		1		1		1		1		1		1		1		1		1		1		1			
Macon Chamber of Commerce	5		5		5		5		5		5		5		5				5			5	5		5			
Rome Chamber of Commerce	1		1		1		1		1		1		1		1		1		1		1		1		1			
Valdosta Chamber of Commerce	2			2		2	2		2		2		2		2		2		2			2	2		2			2

Name of organization	Questions submitted																											
	1		2		3		4		5		6		7		8		9		10		11		12		13		14	
	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against
IDAHO																												
Moscow Chamber of Commerce	1		1		1		1		1			1	1		1		1			1	1		1			1		1
Pocatello Chamber of Commerce	2		2			2	2		2		2		2		2		2		2		2		2		2		2	
ILLINOIS																												
Alton Chamber of Commerce	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
Bloomington Association of Commerce (6)	5		5		5		5		5		5		5		5		5		5		5	5		5		5		
Braidwood National Macaroni Manufacturers Association	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
Cairo Association of Commerce	1			1		1	1		1		1		1		1		1		1			1		1		1		1
Chicago:																												
The Advertising Specialty Association	1		1		1		1		1		1		1		1		1		1		1		1		1			1
American Association of Ice and Refrigeration	2		2		2		2		2		2		2		1	1	2		1	1	2		2		2		2	
American Corn Millers Federation	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
American Fruit and Vegetable Shippers Association	2		2		2		2		2		2		2		2		2		2		2		2		2		2	
American Photoengravers Association	2		2		2		2		2		2		2		2		2		2		2		2		2		2	
American Washing Machine Manufacturers Association	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
American Wholesale Coal Association	2		2		2		2		2		2		2		2		2		2		2		2		2		2	
Association of Commerce	10		10		10		10		10		10		10		10		10		10		10		10		10		10	
Association of Wood Using Industries	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
Autographic Register Manufacturers Association	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
The Better Bedding Alliance of America	1		1		1		1		1		1		1		1		1	1			1	1			1			1
Board of Trade of the City of Chicago	8		8		8			8	8		8		8		8			8	8		8		8		8		8	
Central Supply Association	2		2		2		2		2		2		2		2		2		2		2		2		2		2	
Farm MortgageBankers' Association of America	2		2		2		2		2		2		2		2		2		2		2		2		2		2	
Federation of Mutual Fire Insurance Companies	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
Flavoring Extract Manufacturers Association of the United States	2		2		2		2		2		2		2		2		2		2		2		2		2		2	
Gas Products Association	1		1			1	1		1		1			1		1	1		1		1		1		1		
Hollow Building Tile Association	1		1		1		1		1		1		1		1		1		1		1		1			1		1
Illinois Association of Ice Cream Manufacturers, Inc.	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
Illinois Bankers Association	10		10		10		10		10		10		10		10		10		10		10		10		10		10	
Illinois Manufacturers Association		10	10								10		10		10	10	10			10	10		10			10		10
Illinois-Wisconsin Ice Dealers' Association	1		1		1			1	1			1	1		1		1		1		1		1		1		1	
Industrial Club	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
Lumbermen's Association of Chicago		2	2			2		2	2		2		2		2		2		2		2		2		2		2	
Millers National Federation	8		8		8		8		8		8		8		8		8		8		8		8		8		8	
Millinery Jobbers Association	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
National Association of Box Manufacturers	2		2		2		2		2		2		2		2		2		2		2		2		2		2	
National Association of Brass Manufacturers	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
National Association of Chair Manufacturers	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
National Association of Farm Equipment Manufacturers	2		2		2		2		2		2		2		2		2		2		2		2		2		2	
National Association of Ice Cream Manufacturers	3		3		3		3		3		3		3		3		3		3		3		3		3		3	
National Association of Ice Industries	10		10		9		10		10		10		8	2	10		10		10		9		10		8	2	2	8
National Association of Piano Bench & Stool Manufacturers	1		1			1	1		1		1		1		1		1		1		1		1		1		1	
National Association of Real Estate Boards	10		10		10		10		10		10		10		10		10		10		10		10		10		10	

Name of organization	Questions submitted																											
	1		2		3		4		5		6		7		8		9		10		11		12		13		14	
	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against
ILLINOIS—continued																												
Chicago—Continued.																												
National Association of Retail Druggists	10		10		10		10		10		10		10		10		10		10		10		10		10			10
National Association of Taxicab Owners	1		1		1		1		1		1		1		1		1		1		1		1			1		1
National Container Association	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
National Furniture Warehousemen's Association (7)	4		4		4		4		4		4		4		4				4				4		4		4	
National Glass Distributors Association	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
National Hardwood Lumber Association (8)	7			7		7		7		7		7			7	7			7		7		7			7	7	
The Nat'onal Ladder Manufacturers Association	1		1		1		1		1		1		1		1		1		1		1		1		1			1
National Manufacturers of Soda Water Flavors	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
National Ornamental Glass Manufacturers Association of the United States and Canada	1		1		1		1	1		1		1	1		1		1		1		1		1		1		1	
National Pickle Packers' Association	1		1			1	1		1			1	1		1		1			1	1			1		1		1
National Retail Lumber Dealers Association	3		3		3		3		3		3		3		1		3		3		3		3		3		3	
National School Supply Association	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
National Shoe Retailers Association	10		10		10		10		10		10		10		10		10		10		10		10		10			
Oak Flooring Manufacturing Association	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
Plywood Manufacturers Association	1		1		1		1		1		1		1		1		1		1		1		1		1		½	½
Sales Book Manufacturers Association	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
Wholesale Saddlery Association of the United States	1				1		1		1		1		1		1		1				1						1	
Wirebound Box Manufacturers Association	1		1			1	1		1		1		1		1		1		1		1		1		1		1	
Danville Chamber of Commerce	4		4		4		4		4		4		4		4		4		4		4		4		4		4	
East St. Louis Chamber of Commerce	2		2		2		2		2		2		2		2		2		2		2		2		2			2
Freeport Chamber of Commerce	1		1		1		1		1				1		1		1		1		1		1					
Joliet Association of Commerce (Inc.)	3		3			3	3		3		3		3		3		3		3		3		3		3		3	
Kewanee Chamber of Commerce	2		2		2		2		2		2		2		2		2		2		2		2		2		2	
La Salle Illinois Valley Manufacturers Club	1		1		1		1		1				1	1			1		1		1		1					1
Moline:																												
Chamber of Commerce	3		3		3			3	3		3		3		3		3		3		3		3		3		3	
Tri-City Manufacturers Association	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
Ottawa Chamber of Commerce	2		2					2	2		2		2		2		2		2		2		2					2
Peoria Association of Commerce	10		10		10		10		10		10		10		10		10		10		10		10		10		10	
Quincy National Association of Egg Case and Egg Case Filler Manufacturers	1		1		1		1		1		1		1		1		1		1		1		1					1
Rockford Chamber of Commerce	4		4		4		4		4		4		4		4		4		4		4		4		4		4	
Rock Island Chamber of Commerce	3		3		3		3		3		3		3		3		3		3		3		3		3		3	
Springfield Chamber of Commerce	8		8			8	8		8		8		8		8		8		8		8		8		8		8	
Sterling Association of Commerce	2		2		2			2		2		2		2		2		2		2		2		2		2		2
Urbana Association of Commerce	2		2		2		2		2		2		2		2		2		2		2		2		2		2	
INDIANA																												
Anderson Chamber of Commerce	2		2		2		2		2		2		2		2		2		2		2		2		2		2	
Bloomington Chamber of Commerce	2		2		2		2		2		2		2		2			2	2		2		2					2
Clinton Chamber of Commerce	1		1			1	1		1		1		1		1		1		1		1		1		1		1	
Crawfordsville: National Association of Mutual Insurance Companies	4		4		4		4		4		4		4		4		4		4		4		4		4		4	
East Chicago Chamber of Commerce	2		2		2		2		2		2		2		2		2		2		2		2		2		2	

Name of organization	Questions submitted																									
	1		2		3		4		5		6		7		8		9		10		11		12		13		14	
	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against
INDIANA—continued																												
Evansville Chamber of Commerce	9		9		9				9		9		9		9		9		9		9		9		9		9	
Fort Wayne Chamber of Commerce	6		6		6		6		6		6		6		6		6		6		6		6		6		6	
Gary:																												
Commercial Club	2		2		2		2		2		2		2		2		2		2		2		2		2		2	
Gary Chamber of Commerce	3		3		3		3		3		3		3		3		3		3		3		3		3		3	
Hammond Chamber of Commerce	3		3		3		3		3		3		3		3		3		3		3		3		3		3	
Indianapolis:																												
Board of Trade	3		3		3		3		3		3		3		3		3		3		3				3		3	
Chamber of Commerce	10			10	10		10		10		10		10		10			10	10		10		10		10			
National Brick Manufacturers Association	3		3		3		3		3		3		3		3		3		3		3		3		3		3	
National Builders' Supply Association (Inc.)	1		1		1		1		1		1		1		1		1		1		1		1		1			
National Food Brokers Association	4		4		4		4		4		4		4		4		4		4		4		4		4		4	
National Retail Hardware Association	10		9	1	8	2	8	2	9	1	9	1	9	1	8	2	8	2	8	2	8	2	9	1	9	1	7	
Kokomo Chamber of Commerce	2		2		2				2		2		2		2		2		2		2		2		2		2	
Michigan City Chamber of Commerce	4		4				4		4		4		4		4		4		4		4		4		4		4	
Muncie Chamber of Commerce	5		5		5		5		5		5		5				5		5		5		5		5		5	
Newcastle Chamber of Commerce		3	3			3	3			3	3		3			3	3			3	3		3		3		3	
Terre Haute Chamber of Commerce		9	9			9	9		9		9			9		9		9		9		9		9		9		
Valparaiso Chamber of Commerce	3		3		3		3		3			3	3		3			3	3		3		3		3			3
IOWA																												
Greater Burlington Association	2		2		2				2		2			2	2		2		2		2		2		2		2	
Davenport Chamber of Commerce	6		6		6		6			6	6	6	6		6		6		6		6		6		6		6	
Des Moines:																												
Greater Des Moines Committee	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
National Selected Morticians	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
Dubuque Chamber of Commerce	5		5		5		5		5		5		5		5		5		5		5		5		5		5	
Fort Madison Chamber of Commerce	2		2		1	1	2		2		2		2		2		2		2			2	2		2		2	
Marshaltown Chamber of Commerce	3		3			3		3	3		3			3	3		3		3		3		3		3		3	
Sioux City Chamber of Commerce	6		6		6			6	6		6		6		6		6		6		6		6		6			6
Greater Waterloo Association	4		4		4		4		4		4		4		4		4		4		4		4		4		4	
KANSAS																												
Abilene Commercial Club			1					1			1																	
Arkansas City Chamber of Commerce	1		1		1		1		1		1		1		1		1		1		1		1		1		1	3
Atchison Chamber of Commerce (9)	3		3		3			3	3		3			3	3		3		3		3		3					
Fort Scott Chamber of Commerce	4					4								4			4		4		4							
Iola Chamber of Commerce	2		2		2		2		2		2		2		2		2		2		2		2		2		2	
Kansas City Chamber of Commerce	6		6			6		6	6		6			6	6		6		6			6	6		6		6	
Lawrence Chamber of Commerce	2		2		2		2		2		2		2		2		2		2		2		2		2		2	
Leavenworth Chamber of Commerce	3		3			3		3	3		3		3		3		3		3		3		3		3		3	
Ottawa Chamber of Commerce	2		2			2	2		2		2		2		2		2		2		2		2		2		2	
KENTUCKY																												
Danville Chamber of Commerce	1		1		1		1		1		1		1		1		1		1		1		1		1			1
Frankfort Chamber of Commerce	2		2			2	2		2		2		2		2			2	2		2		2		2			
Lexington Board of Commerce (Inc.)	3		3		3		3		3		3		3		3		3		3		3		3		3		3	
Louisville:																												
Associated Industries of Kentucky	2		2		2		2		2		2		2		2		2		2		2		2		2		2	
Board of Trade	10		10			10		10	10		10		10		10		10		10			10	10			10	10	
Owensboro Chamber of Commerce	1		1		1		1		1		1		1		1		1		1		1		1		1		1	

Name of organization	Questions submitted																									
	1		2		3		4		5		6		7		8		9		10		11		12		13		14	
	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against
LOUISIANA																												
Alexandria Chamber of Commerce	2		2		2		2		2		2		2		2		2		2		2		2	2	2			2
New Orleans:																												
Association of Commerce (10)	10		10		10					10	10		10		10		10		10		10		10					
Board of Trade (Ltd.)	3		3		3		3		3		3		3		3		3		3		3		3		3			3
Cotton Exchange	3		3		3		3		3		3		3		3		3		3		3		3		3		3	
Southern Pine Association	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
Shreveport Chamber of Commerce	6		6		6		6			6	6			6	6		6		6		6		6		6		6	
MAINE																												
Portland Chamber of Commerce	5		5		5		5		5		5		5		5		5		5		5		5		5			5
Rockland Chamber of Commerce	1		1				1		1		1		1		1				1		1		1		1			
Waterville-Winslow Chamber of Commerce	2		2		2		2		2		2		2		2		2		2		2		2		2		2	
MARYLAND																												
Baltimore:																												
Chamber of Commerce	2		2		*2		2		2		2		2		2		2		2		2		2		2		2	
Export and Import Board of Trade of Baltimore	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
Lumber Echange of Baltimore	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
Merchants and Manufacturers Association	10		10		10		10		10		10		10		10		10		10		10		10		10		10	
National Lumber Exporters Association	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
Cumberland Chamber of Commerce		2	2			2	2		2		2		2		2		2		2		2		2			2		2
Salisbury-Wicomico Chamber of Commerce	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
MASSACHUSETTS																												
Athol Board of Trade		1	1			1	1			1	1		1		1		1		1		1		1		1		1	
Attleboro Chamber of Commerce	3		3		3		3		3		3		3		3		3		3		3		3		3		3	
Boston:																												
American Dental Trade Association	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
Chamber of Commerce (11)	01		10		10			10		10	10			10	10			10	10			10	10			10		
Dorchester Board of Trade	2		2		2		2		2		2		2		2		2		2		2		2		2		2	
Eastern Shook and Wooden Box Manufacturers Association	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
Massachusetts State Chamber of Commerce	1		1		1		1		1		1		1		1		1		1		1		1		1			1
Massachusetts Wholesale Lumber Association (Inc.)	1		1		½	½	½	½	1		1		1		1		1		½	½	1		1		1		1	
New England Coal Dealers Association	4		4		4		4		4		4		4		4		4		4		4		4		4			4
New England Hardware Dealers' Association	3		3		3		3		3		3		3		3		3		3		3		3		3		3	
New England Shoe and Leather Association	2		2			2		2		2	2		2						2	2			2		2			
Smokeless Coal Operators Association of West Virginia	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
Everett Chamber of Commerce	3		3		3		3		3		3		3		3		3		3		3		3					3
Fall River Chamber of Commerce	4		4			4		4		4		4		4		4		4		4		4		4		4		4
Fitchburg Chamber of Commerce	3		3		3		3		3		3		3			3		3		3		3		3			3	
Gardner Chamber of Commerce	3		3		3		3			3	3			3		3		3		3		3		3				3
Haverhill Chamber of Commerce	4		4			4		4		4		4		4		4		4		4		4		4				4
Holyoke Chamber of Commerce (12)	3		3		3			3	3		3		3		3			3	3		3		3					3
Lawrence Chamber of Commerce	3		3			3		3		3	3		3							3		3		3				
Lowell Chamber of Commerce	4		4		4			4	4		4		4		4		4		4		4		4		4			
New Bedford Board of Commerce	7		7			7	7			7	7		7			7	7		7			7	7			7		
Pittsfield Chamber of Commerce	4		4			4	4		4		4		4			4	4		4			4	4		4			
Plymouth Chamber of Commerce			2																									
Springfield Chamber of Commerce (13)	4		4		4		4		4		4		4		4		4		4		4		4		4		4	
Worcester Chamber of Commerce	7		7		7			7	7		7		7		7		7		7			7	7			7		

Name of organization	Questions submitted																											
	1		2		3		4		5		6		7		8		9		10		11		12		13		14	
	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against
MICHIGAN																												
Adrian Chamber of Commerce	2		2		2		2		2		2		2		2		2		2		2		2		2			2
Albion Chamber of Commerce	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
Battle Creek Chamber of Commerce	4		4		4		4		4		4		4		4		4		4		4		4		4		4	
Bay Cith Chamber of Commerce	4		4		4		4		4		4		4		4		4		4		4		4		4		4	
Benton Harbor Chamber of Commerce	2		2			2		2	2		2		2		2		2		2			2	2		2		2	
Charlotte Community Association	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
Detroit Board of Commerce	10		10		10		10		10		10		10		10		10		10		10		10		10			10
Flint Chamber of Commerce	8		8		8		8		8		8		8		8		8		8		8		8		8		8	
Fremont Chamber of Commerce	1		1		1		1		1		1		1		1		1		1		1		1		1			1
Grand Rapids:																												
Associated Office Furniture Manufacturers	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
Association of Commerce	10		10		10		10		10		10		10		10		10		10		10		10		10		10	
National Alliance of Furniture Manufacturers	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
National Council of Furniture Associations	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
Hillsdale Chamber of Commerce	1			1	1		1			1	1		1		1			1		1		1		1		1	
Jackson Chamber of Commerce	7		7		7		7		7		7		7		7		7		7		7		7		7		7	
Kalamazoo Chamber of Commerce	5		5		5		5		5		5		5		5		5		5		5		5		5			
Lansing Chamber of Commerce	3		3		3		3		3		3		3		3		3		3		3		3		3			3
Manistee Board of Commerce	2		2			2		2		2		2		2		2		2		2		2		2		2		
Greater Muskegon Chamber of Commerce	6		6		4	2	5	1	5	1	5	1	6		5	1	4	2	5	1	4	2	5	1	6		5	1
Saginaw:																												
Board of Commerce	5		5		5		5		5		5		5		5		5		5		5		5		5		5	
Saginaw Manufacturers Association	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
St. Joseph Chamber of Commerce	4		4			4	4		4		4		4		4		4		4		4		4		4		4	
Ypsilanti Board of Commerce		3	3			3		3		3		3		3			3			3		3	3		3		3	
MINNESOTA																												
Duluth Chamber of Commerce	7		7		7			7	7		7			7	7		7		7			7	7		7		7	
Eveleth Commercial Club	1		1		1		1		1		1		1		1			1	1		1		1		1		1	
Faribault Chamber of Commerce	2		2		2		2		2		2		2		2		2		2		2		2		2		2	
Mankato Civic and Commerce Association	1		2		1	1	2		2		2		2		1	1		2	2		2		2		2			2
Minneapolis:																												
Chamber of Commerce	3		3		3		3		3		3		3		3		3		3		3		3		3		3	
Civic and Commerce Association	10		10			10		10		10	10			10	10		10		10				10		10			
Northern White Cedar Association	1		1		1		1		1		1		1		1		1		1		1		1		1			
Moorhead Commercial Club	1		1		1		1		1		1		1		1		1		1		1		1		1			
St. Paul:																												
Minnesota Employers' Association	3		3		3		3		3		3		3		3		3		3		3		3		3			
National Tent and Awning Manufacturers Association	2		2		2		2		2		2		2		2		2		2		2		2		2			
The St. Paul Association	10		10		10			10	4	6	10			10	10		10						10		10			
Winona Association of Commerce	3		3		3			3	3		3		3		3		3		3		3		3		3			
MISSISSIPPI																												
Corinth Chamber of Commerce	1		1		1		1		1		1		1		1		1		1		1		1		1			
Greenwood Chamber of Commerce (14)	2		2		1	1	2		2			2	2		2		2		2			2		2			2
Greenville Chamber of Commerce	1		1		1		1		1		1		1		1		1		1		1		1		1			
Laurel Chamber of Commerce	3		3			3		3	3		3		3		3		3		3			3	3		3			
Board of Trade of Vicksburg		1	1			1	1				1			1		1		1			1		1		1			1
MISSOURI																												
Hannibal Chamber of Commerce	2		2			2		2	2			2	2		2		2		2			2	2		2			
Independence Chamber of Commerce	2		2		2		2		2		2		2		2		2		2		2		2		2			2
Joplin Chamber of Commerce	3		3		3		3		3		3		3		3		3		3		3		3		3			
Kansas City:																												
Board of Trade	1			1	1		1		1		1	1	1		1			1			1		1	1		1		
Chamber of Commerce of Kansas City	10			10		10		10	10		10					10	10		10			10	10		10		
Merchants' Association	1			1		1		1	1		1					1	1		1			1	1		1		
National Association of Retail Grocers of the United States	10		10			10		10	10		10		10			10	10		10		10		10		10		
Women's Commercial Club	1			1		1		1	1		1					1	1		1			1	1		1		

Name of organization	Questions submitted																											
	1		2		3		4		5		6		7		8		9		10		11		12		13		14	
	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against
MISSOURI—continued																												
St. Charles Community Chamber of Commerce	2		2			2	2		2		2		2		2		2		2		2		2		2		2	
St. Joseph Chamber of Commerce	6		6		6			6		6		6	6			6		6		6		6	6		6			
St. Louis:																												
American Wholesale Garment Association	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
Chamber of Commerce	10		10		10			10	10		10		10		10		10		10		10		10			10		
Merchants Exchange	4			4		4	4			4		4		4		4		4		4		4		4		4		
National Basket and Fruit Package Manufacturers Association	1			1		1	1			1		1			1	1		1		1		1		1		1		
National Leather and Shoe Finders Association	2		2		2		2		2		2		2		2		2		2		2		2		2		2	
North St. Louis Business Men's Association	7		7			7		7	7		7					7	7		7		7		7		7		
MONTANA																												
Billings Commercial Club			2																									
Bozeman Chamber of Commerce	2		2		2		2		2		2		2								2		2		2		2	
Glasgow Chamber of Commerce and Agriculture	1		1		1		1		1		1										1			1	1			
Great Falls Commercial Club	3		3		3		3		3		3		3		3		3		3		3		3		3			
Helena:																												
Commercial Club	2		2		2		2		2		2		2			2	2		2		2		2		2		2	
Montana Bankers Association (15)	2		2			2	2		2		2		2		2		2		2		2		2		2		2	
Missoula Chamber of Commerce	2		2			2	2		2		2		2		2		2		2		2		2		2		2	
NEBRASKA																												
Fremont Chamber of Commerce	1				1		1		1		1				1	1	1		1			1	1		1		1	
Lincoln:																												
Chamber of Commerce	8		8			8		8	8		8			8	8		8		8			8	8		8			8
Federation of Nebraska Retailers	6			6		6		6	6		6			6	6		6		6			6	6		6			6
Nebraska Manufacturers Association	2		2		2		2		2		2		2		2		2		2		2		1	1	2		2	
Omaha:																												
Chamber of Commerce	10		10			10		10		10	10		10			10	10				10		10		10		10	
Omaha Grain Exchange	1		1		1		1		1		1		1		1		1		1		1				1	1		1
NEVADA																												
Reno Chamber of Commerce	4		4		4		4		4		4		4		4			4					4				4		4
NEW HAMPSHIRE																												
Keene Chamber of Commerce	2		2		2		2		2		2		2		2		2		2		2		2		2		2	
Lebanon Chamber of Commerce	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
Portsmouth Chamber of Commerce	2		2		2		2			2	2		2		2		2		2		2		2		2		2	
NEW JERSEY																												
Bayonne Chamber of Commerce	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
Camden Chamber of Commerce	8		8		8		8		8		8		8		8		8		8		8		8		8			8
Englewood Board of Trade	1		1		1		1		1		1		1		1		1		1		1		1		1			1
Hightstown Board of Trade	1		1		1			1	1		1		1		1		1		1			1	1		1			1
Hoboken Chamber of Commerce	4		4			4		4	4		4		4		4		4		4		4		4		4		4	
Montclair Chamber of Commerce		2		2		2		2		2		2		2		2		2		2		2		2		2		
Morristown Chamber of Commerce		1		1			1		1		1		1		1		1		1		1		1		1		1	
Newark:																												
Chamber of Commerce	10		10		10		10		10		10		10		10		10		10		10		10		10			10
New Jersey State Chamber of Commerce	2		2		2		2		2		2		2		2		2		2		2		2		2		2	
New Brunswick Board of Trade	2		2		2		2		2		2		2		2		2		2		2		2		2		2	
Passaic Chamber of Commerce	3		3			3	3		3		3		3		3		3		3		3		3		3			3
Paterson Chamber of Commerce	5		5		5		5		5		5		5		5		5		5		5		5		5		5	
Ridgewood Chamber of Commerce of Ridgewood, New Jersey	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
Salem Chamber of Commerce	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
Somerville Chamber of Commerce	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
Trenton Chamber of Commerce	6					6	6		6		6		6			6	6				6		6		6			6

Name of organization	Questions submitted																											
	1		2		3		4		5		6		7		8		9		10		11		12		13		14	
	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against
NEW MEXICO																												
Roswell Chamber of Commerce	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--
Silver City: Grant County Chamber of Commerce	--	--	1	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
NEW YORK																												
Amsterdam Board of Trade	3	--	3	--	--	3	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--
Auburn Chamber of Commerce (16)	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--
Binghamton Chamber of Commerce	3	--	3	--	3	--	3	--	3	--	3	--	3	--	--	3	--	3	3	--	3	--	3	--	3	--	--	3
Brooklyn:																												
American Boiler Manufacturer's Association	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
Chamber of Commerce	10	--	10	--	10	--	10	--	10	--	10	--	10	--	10	--	10	--	10	--	10	--	10	--	10	--	10	10
Wholesale Stationers' Association of United States of America	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
Buffalo Chamber of Commerce (17)	10	--	--	10	10	--	10	--	--	10	10	--	10	--	10	--	10	--	10	--	--	10	--	10	10	--	--	--
Cohoes Chamber of Commerce	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--
Elmira Chamber of Commerce	4	--	4	--	--	4	4	4	--	4	--	4	4	--	4	--	--	4	--	4	4	--	4	--	--	--	4	--
Fulton Chamber of Commerce	1	--	1	--	--	1	1	--	--	1	1	--	1	--	1	--	--	1	--	1	--	1	--	1	--	--	--	1
Glens Falls Chamber of Commerce	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
Gloversville Chamber of Commerce (18)	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	--	2
Herkimer Chamber of Commerce	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--
Ithaca Board of Commerce	--	--	3	--	3	--	3	--	3	--	3	--	3	--	--	3	--	3	--	--	--	3	--	--	--	3	--	3
Ilion Chamber of Commerce (Inc.)	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
Jamestown Chamber of Commerce	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	4	--	--	4	--	4	--	4	--	4	--
Kingston Chamber of Commerce	2	--	2	--	--	--	2	--	--	--	2	--	2	--	2	--	2	--	--	--	--	--	--	--	2	--	2	--
Lockport Board of Commerce	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--
Middletown Chamber of Commerce	2	--	2	--	--	2	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--
New York:																												
American Association of Wholesale Opticians	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
American Electric Railway Association	10	--	10	--	10	--	--	10	10	--	10	--	10	--	10	--	10	--	10	10	--	10	--	10	--	10	--	
American Envelope Manufacturers Association	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
American Exporters and Importers Association	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	--	--
American Gas Association	10	--	10	--	--	10	10	--	10	--	10	--	10	--	10	--	--	10	10	--	10	--	10	--	10	--	10	--
American Hardware Manufacturers Association	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--
American Institute of Consulting Engineers (Inc.)	1	--	1	--	--	1	1	--	1	--	1	--	1	--	1	--	--	1	--	--	1	--	1	--	1	--	1	--
American Lace Manufacturers Association	1	--	1	--	--	1	1	--	--	1	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
American Manufacturers Export Association	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--
American Paper and Pulp Association	2	--	2	--	2	--	2	--	2	--	2	--	2	--	1	1	1	1	2	--	2	--	2	--	2	--	2	--
American Pharmaceutical Manufacturers Association	1	--	1	--	--	1	1	--	1	--	--	1	1	--	1	--	--	1	--	1	1	--	1	--	1	--	1	--
American Spice Trade Association	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
American Tack Manufacturers' Association	1	--	1	--	1	--	1	--	--	1	1	--	1	--	--	1	--	1	--	1	1	--	1	--	1	--	1	--
Associated Fur Manufacturers (Inc.)	2	--	2	--	2	--	--	2	--	2	2	--	2	--	--	2	--	2	--	2	--	2	--	2	--	2	--	2
Association of Ice Cream Supply Men	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
Association of Manufacturers of Confectionery and Chocolate of the State of New York	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	--	1	1	--	1	--	1	--	1	--	1	--
Biscuit and Cracker Manufacturers Association of America	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
Bronx Board of Trade	5	--	5	--	--	5	5	--	--	5	5	--	5	--	5	--	5	--	5	--	5	--	5	--	5	--	5	--
Chamber of Commerce of the Borough of Queens	7	--	7	--	--	7	7	--	7	--	7	--	7	--	7	--	--	7	7	--	7	--	7	--	--	7	--	7
The Compressed Air Society	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
Eastern Ice Manufacturers Association	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
Eastern Millinery Association (Inc.)	2	--	2	--	--	2	--	2	--	2	2	--	2	--	2	--	--	2	--	2	2	--	2	--	2	--	2	--
Eastern Supply Association	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--

Name of organization	Questions submitted																											
	1		2		3		4		5		6		7		8		9		10		11		12		13		14	
	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against
NEW YORK—continued																												
New York—Continued.																												
Empire State Gas and Electric Association	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
Engravographia	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
Folding Box Manufacturers National Association	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
Foundry Supply Manufacturers' Association	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	--	1
Harlem Board of Commerce	3	--	3	--	--	3	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--
Hatters' Fur Cutters Association of the United States of America	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
Heating and Piping Contractors National Association	4	--	4	--	2½	1½	4	--	4	--	2½	1½	4	--	2½	1½	2½	1½	4	--	4	--	4	--	4	--	4	--
Italian Chamber of Commerce in New York	2	--	2	--	2	--	2	--	2	--	2	--	--	2	2	--	2	--	2	--	2	--	2	--	2	--	2	--
Label Manufacturers National Association	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
Manufacturers Council of the State of New Jersey	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
Merchants Association of New York (19)	10	--	10	--	10	--	10	--	10	--	10	--	10	--	10	--	10	--	10	--	10	--	10	--	10	--	--	--
Metal Finisher's Equipment Association	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	--	1
National American Wholesale Lumber Association	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--
National Association of Automotive Mutual Insurance Companies	1	--	1	--	--	1	1	--	1	--	1	--	1	--	1	--	--	1	1	--	1	--	1	--	1	--	1	--
National Association of Finishers of Cotton Fabrics	--	--	1	--	1	--	1	--	1	--	1	--	1	--	--	--	--	--	--	--	--	--	--	--	--	1	--	--
National Association of Men's Straw Hat Manufacturers of America	1	--	1	--	--	1	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	--	1
National Association of Mutual Casualty Companies	1	--	1	--	--	1	1	--	1	--	1	--	1	--	1	--	--	1	1	--	1	--	1	--	1	--	1	--
National Association of Office Appliance Manufacturers	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
National Association of Waste Material Dealers	2	--	2	--	--	2	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--
National Automobile Chamber of Commerce (Inc.)	1	--	1	--	--	--	1	--	1	--	1	--	--	1	1	--	1	--	1	--	1	--	1	--	1	--	1	--
National Board of Steam Navigation	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--
National Boot and Shoe Manufacturers Association of the United States	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--
National Coffee Roasters Association	2	--	2	--	1	1	1	1	2	--	2	--	2	--	2	--	2	--	2	--	2	--	1	1	1	1	1	1
National Council of American Importers and Traders	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--
National Paint, Oil and Varnish Association (Inc.)	6	--	6	--	6	--	6	--	6	--	6	--	6	--	6	--	6	--	6	--	6	--	6	--	6	--	6	--
National Publishers Association	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
National Wholesale Druggists Association	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--
The Netherlands Chamber of Commerce in New York (Inc.)	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	--	--	--	--
New York Boat Owners Association (Inc.)	1	--	1	--	1	--	--	1	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
New York Lumber Trade Association	4	--	4	--	--	4	4	--	4	--	4	--	4	--	4	--	--	4	4	--	4	--	4	--	--	4	--	4
New York Produce Exchange	9	--	9	--	9	--	9	--	9	--	9	--	9	--	9	--	9	--	9	--	9	--	9	--	9	--	--	--
New York Tow Boat Exchange (Inc.)	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	--	--
Pyroxylin Plastic Manufacturers Association	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
Railway Car Manufacturers' Association	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
The Refrigerating Machinery Association	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
The Rubber Association of America (Inc.)	--	2	2	--	--	2	2	--	2	--	2	--	--	2	--	2	2	--	2	--	2	--	--	2	--	--	2	2
Silk Association of America	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--

Name of organization	Questions submitted																											
	1		2		3		4		5		6		7		8		9		10		11		12		13		14	
	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against
NEW YORK—continued																												
New York—Continued.																												
Toy Manufacturers of the United States of America	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
United Waist League of America	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
Valve and Fittings Institute	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
Yorkville Chamber of Commerce	2		2		2		2		2		2		2		2		2		2		2		2		2		2	
Olean Chamber of Commerce	2		2		2		2		2		2		2		2		2		2		2		2		2		2	
Oneida Chamber of Commerce	1		1			1		1	1		1		1		1		1		1		1		1		1		1	
Oswego Chamber of Commerce	2		2		2		2		2		2		2		2		2		2		2		2		2		2	
Owego Chamber of Commerce	2		2			2	2		2		2		2		2		2		2		2		2		2		2	
Plattsburg Chamber of Commerce	1		1			1	1		1		1		1		1		1			1	1		1		1			
Poughkeepsie Chamber of Commerce	3		3		3		3			3	3		3		3			3	3		3		3		3			
Rochester:																												
Chamber of Commerce (20)	10		10		10		10		10			10		10		10		10		10		10		10				
Northeastern Retail Lumbermen's Association	2		2		2		2		2		2		2		2		2		2		2		2		2			
Rome Chamber of Commerce (21)	3		3		3		3		3			3	3		3		3		3		3		3		3			
Saratoga Springs Chamber of Commerce	1		1		1		1		1		1		1		1		1		1		1			1	1			
Schenectady Chamber of Commerce	7			7		7	7			7				7	7		7			7	7			7		7		
Syracuse Chamber of Commerce	8		8		8		8		8		8		8		8		8		8		8		8		8			
Tompkinsville, Staten Island, Chaber of Commerce	2		2		2		2		2		2								2			2	2		2		2	
Troy:																												
Association of Collar Manufacturers of Troy, N. Y	1		1		1		1		1		1			1	1		1		1		1		1		1			
Chamber of Commerce (22)	4		4		4		4			4	4		4		4		4		4		4		4		4			
Utica Chamber of Commerce	3		3		3		3		3		3		3		3		3		3		3		3		3			
Watertown Chamber of Commerce	3		3			3	3		3		3		3		3		3			3		3		3				3
Yonkers Chamber of Commerce	2		2		2		2		2		2		2			2	2		2		2		2		2		2	
NORTH CAROLINA																												
Charlotte:																												
Chamber of Commerce	5				5		5		5		5		5		5		5		5		5		5		5			
Hardware Association of the Carolinas	2		2			2	2		2		2		2		2		2		2		2		2		2			
Gastonia Chamber of Commerce (Inc.)	3		3		3			3	3		3		3		3		3			3	3		3					3
North Wilkesboro: Wilkes Commercial Club	1		1		1		1		1		1		1		1		1		1		1		1		1			
NORTH DAKOTA																												
Devils Lake Civic and Commerce Association	2		2		2		2		2		2		2		2		2		2		2		2					2
Fargo:																												
Commercial Club	2		2		2		2		2		2		2		2		2		2		2		2		2			
North Dakota Retail Merchants Association	4			4	4		4		4		4		4		4		4		4		4		4		4			
Grand Forks Commercial Club	2		2		2			2	2		2		2		2		2			2	2		2		2			
Jamestown Chamber of Commerce	2		2		2		2		2		2		2			2		2		2		2	2		2			
Minot Association of Commerce	1		1			1	1			1	1		1		1		1			1	1		1		1			
Valley City Commercial Club	1		1		1		1		1		1		1		1		1		1		1		1		1			
OHIO																												
Akron Chamber of Commerce (23)	10		10			10	10			10	10		10		10			10	10			10		10	10			10
Alliance Chamber of Commerce	2		2		2		2		2		2		2		2		2		2		2		2		2		2	
Ashtabula Chamber of Commerce	3		3			3	3		3		3		3		3		3		3		3		3		3		3	
Canton Chamber of Commerce			10		10			10		10	10		10		10			10		10		10	10		10			
Cincinnati:																												
Carriage Builders National Association of the United States	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
Cincinnati Chamber of Commerce	10		10		10		10		10		10		10		10		10		10		10		10		10			

Name of organization	Questions submitted																											
	1		2		3		4		5		6		7		8		9		10		11		12		13		14	
	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against
OHIO—continued																												
Cleveland:																												
American Gear Manufacturers' association	1		1			1	1		1		1		1		1		1			1		1	1		1			1
Cleveland Chamber of Commerce	10		10			10		10		10	10					10		10	10			10	10			10		
Fire Insurance Club of Cleveland	2		2			2	2			2	2		2			2	2		2		2		2		2		2	
International Association of Electrotypers	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
National Association of Marble Dealers	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
National Petroleum Association	1			1	1		1		1		1		1		1		1		1		1		1			1		1
Columbus:																												
Chamber of Commerce	10		10		10		10		10		10		10		10		10		10		10		10		10		10	
Electrical Manufacturers Club	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
National Association of Stove Manufacturers	1		1		1		1						1		1		1		1		1		1		1		1	
Ohio Chamber of Commerce	7		7		7		7		7		7			7	7		7		7			7	7		7		7	
Ohio Manufacturers Association	3		3		3		3		3		3		3		3		3		3		3		3		3		3	3
Dayton:																												
Dayton Chamber of Commerce	8		8		8			8	8		8		8		8			8	8		8		8		8		8	
The Ohio Hardware Association	8		8		8			8	8		8		8		8			8	8			8	8		8		8	
Delaware Chamber of Commerce	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
Dover Chamber of Commerce	1		1			1	1		1		1		1		1			1	1			1	1		1		1	
East Liverpool:																												
Chamber of Commerce	1		1		1		1		1		1		1		1		1		1		1		1		1			1
United States Potters Association	1		1						1		1		1		1		1						1		1		1	
Findlay Chamber of Commerce	3		3		3		3		3		3		3		3		3		3		3		3		3		3	
Hamilton Chamber of Commerce	4		4		4		4		4		4		4		4		4		4		4		4		4		4	
Ironton Chamber of Commerce	3		3		3		3		3		3		3		3		3		3		3			3		3		3
Kenton Chamber of Commerce	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
Lima Board of Commerce	4		4			4		4	4		4		4		4		4		4			4		4		4		4
Mansfield Chamber of Commerce	2		2		2		2		2		2		2		2		2		2		2		2		2		2	
Marietta Chamber of Commerce	2		2		2		2		2		2		2		2		2		2		2		2		2		2	
Marion Chamber of Commerce	3		3		3		3		3		3		3		3		3		3		3		3		3		3	
Nelsonville Chamber of Commerce	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
Newark Chamber of Commerce (24)	2		2			2		2		2		2	2		2		2			2		2	2		2		2	
Plainesville: Lake County Chamber of Commerce	2		2		2		2		2		2		2		2			2	2		2		2		2		2	
Portsmouth Chamber of Commerce	2		2		2		2		2		2		2		2		2		2		2		2		2		2	
Springfield Chamber of Commerce	4		4		4		4		4		4		4		4			4	4		4		4		4		4	
Steubenville Chamber of Commerce	3		3		3		3		3		3		3		3			3	3			3	3		3		3	
Tiffin Chamber of Commerce (25)	1		1			1	1		1		1		1		1		1		1		1			1	1			1
Toledo Chamber of Commerce	9		9		9			9	9		9		9		9		9		9		9		9		9		9	
Youngstown Chamber of Commerce	6		6			6	6		6		6		6		6			6	6			6	6			6		6
Zanesville Chamber of Commerce	4		4		4		4		4		4		4		4		4		4		4		4		4			
OKLAHOMA																												
Blackwell Commercial Club	2			2	2		2		2		2			2			2					2	2		2			2
Duncan Chamber of Commerce	1		1		1		1		1		1		1		1		1		1		1		1		1		1	
El Reno Chamber of Commerce	2		2		2		2		2		2		2		2		2		2		2		2		2		2	
Mangum Chamber of Commerce	1		1		1			1	1		1		1		1		1		1		1		1		1			
Marlow Chamber of Commerce		1	1		1			1	1		1		1		1		1		1		1			1	1			
Oklahoma City Chamber of Commerce	8		8		8		8		8		8		8			8	8		8		8		8		8			8
Ponca City Chamber of Commerce	2		2		2		2		2		2		2		2		2		2		2		2		2			
Tulsa Chamber of Commerce	10		10		10		10		10		10		10		10		10		10		10		10		10			
OREGON																												
Portland:																												
Chamber of Commerce				1											1													
Oregon State Chamber of Commerce	10		10		10		10		10		10		10		10		10		10		10		10		10		10	

Name of organization	Questions submitted																											
	1		2		3		4		5		6		7		8		9		10		11		12		13		14	
	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against
PENNSYLVANIA																												
Allentown Chamber of Commerce	4	--	4	--	--	--	4	4	--	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	--	--	--	--
Altoona Chamber of Commerce	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	--	--
Beaver Falls Associated Tile Manufacturers	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
Bethlehem Chamber of Commerce	--	4	4	--	--	4	--	4	--	4	4	--	4	--	--	4	--	4	4	--	--	4	--	4	--	4	--	--
Bradford:																												
Board of Commerce	--	3	3	--	--	3	--	3	3	--	3	--	--	3	3	--	--	3	3	--	--	3	--	--	3	--	3	--
National Wood Chemical Association	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	--	1
Butler Board of Commerce	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--
Chambersburg Chamber of Commerce	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--
Charleroi Chamber of Commerce	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1
Conshohocken Chamber of Commerce	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
Corry Chamber of Commerce	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
Erie:																												
Erie Chamber of Commerce	5	--	5	--	--	5	--	5	--	5	--	5	--	5	--	5	--	5	--	5	--	5	--	5	--	5	--	5
National Association of Merchant Tailors of America	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--
Franklin Chamber of Commerce	2	--	2	--	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2
Grove City Commercial Club	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
Hanover Chamber of Commerce	2	--	2	--	--	2	2	--	2	--	2	--	2	--	2	--	--	2	2	--	2	--	2	--	2	--	2	--
Harrisburg:																												
American Industrial Lenders' Association	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--
Harrisburg Chamber of Commerce	6	--	6	--	--	6	6	--	--	6	6	--	6	--	6	--	--	6	6	--	6	--	6	--	6	--	6	--
Pennsylvania State Chamber of Commerce	10	--	10	--	10	--	--	10	10	--	10	--	10	--	10	--	--	10	10	--	10	--	10	--	10	--	10	--
Hazleton Chamber of Commerce	2	--	2	--	2	--	2	--	2	--	2	--	2	--	--	2	2	--	2	--	2	--	2	--	2	--	2	--
Johnstown Chamber of Commerce (Inc.)	2	--	2	--	--	--	2	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	--	--	2
Lancaster Chamber of Commerce	4	--	4	--	4	--	--	4	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--
Lebanon Chamber of Commerce	2	--	2	--	--	2	2	--	--	2	2	--	2	--	--	2	--	2	--	2	2	2	2	--	2	--	--	--
McKeesport Chamber of Commerce	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--
Meadville Chamber of Commerce	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3
New Castle Board of Trade	--	2	2	--	--	2	2	--	--	2	--	2	--	2	--	2	--	2	2	--	2	--	2	--	--	--	--	2
Norristown: Manufacturers Association of Montgomery County	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
Oil City Chamber of Commerce	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
Philadelphia:																												
Anthracite Coal Operators Association	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
Board of Trade	10	--	10	--	--	10	10	--	--	10	10	--	10	--	10	--	--	10	10	--	10	--	10	--	10	--	10	--
Chamber of Commerce	10	--	10	--	10	--	--	10	10	--	10	--	10	--	10	--	10	--	10	--	10	--	10	--	10	--	10	--
Commercial Exchange of Philadelphia	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	--	2	2	--	2	--	2	--	--	2	--	2
Ice Publicity Association of Philadelphia and Vicinity (Inc.)	1	--	1	--	--	1	--	1	1	--	1	--	1	--	1	--	1	--	1	--	--	1	1	--	--	1	--	1
Lumbermen's Exchange	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
National Association of Sheet Metal Contractors of the United States	--	10	--	10	--	10	--	10	--	10	--	10	--	10	--	10	--	10	--	10	--	10	--	10	--	10	--	10
National Cigar Box Manufacturers Association	1	--	1	--	--	1	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	--	--	--	1
National Fertilizer Association	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
National Paper Box Manufacturers Association	3	--	3	--	3	--	3	--	3	--	3	--	2	1	2	1	3	--	3	--	3	--	3	--	1	2		
Philadelphia Bourse (26)	10	--	10	--	--	--	10	--	--	10	10	--	10	--	10	--	--	10	10	--	10	--	10	--	10	--	10	--
Philadelphia Furniture & Bedding Manufacturers Association	1	--	1	--	--	1	--	1	1	--	1	--	--	1	--	1	--	1	1	--	1	--	1	--	--	1	1	--
Philadelphia Maritime Exchange	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--
Railway Business Association	--	--	3	--	--	--	--	--	--	--	3	--	--	--	--	--	--	--	--	--	--	--	--	--	3	--	--	--
Stoker Manufacturers' Association	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--

Name of organization	Questions submitted																											
	1		2		3		4		5		6		7		8		9		10		11		12		13		14	
	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against
PENNSYLVANIA—continued																												
Pittsburgh:																												
American Warehousemen's Association	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	--	3
Chamber of Commerce of Pittsburgh	10	--	10	--	10	--	10	--	10	--	10	--	10	--	10	--	10	--	10	--	10	--	10	--	10	--	10	--
International Stamp Manufacturers Association	1	--	2	--	2	--	2	--	2	--	2	--	2	--	--	2	2	--	2	--	2	--	2	--	2	--	--	2
National Pipe and Supplies Association (27)	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--
Natural Gas Association of America	8	--	8	--	8	--	8	--	8	--	8	--	8	--	8	--	--	8	8	--	8	--	8	--	8	--	8	--
Power Piping Society	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
Retail Lumber Dealers' Association of Pennsylvania	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--
Reading Chamber of Commerce (28)	7	--	7	--	7	--	--	--	7	--	7	--	7	--	7	--	7	--	7	--	7	--	7	--	7	--	7	--
Ridgway, Elk County Manufacturers' Association	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	--	1
St. Marys Chamber of Commerce	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--
Scranton Board of Trade	4	--	4	--	4	--	--	4	4	--	4	--	4	--	4	--	--	4	4	--	4	--	4	--	4	--	4	--
Somerset Chamber of Commerce	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	--	1	1	--	--	1	--	1
Titusville Chamber of Commerce	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1
Waynesboro Chamber of Commerce	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	--	2
Waynesburg, Greene County, Waynesburg Chamber of Commerce and Greene County Publicity Bureau	1	--	1	--	--	--	1	1	--	1	--	--	--	1	1	--	1	--	--	--	1	--	1	--	1	1	--	1
Williamsport Chamber of Commerce	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	--	--	3	--	3	--	3	--
York:																												
Chamber of Commerce	5	--	5	--	--	--	5	5	--	5	--	5	--	5	--	--	5	5	--	5	--	--	5	--	5	5	--	--
Manufacturers Association	1	--	1	--	--	--	1	1	--	1	--	1	--	1	--	--	1	--	1	--	1	--	1	--	1	--	1	--
RHODE ISLAND																												
Pawtucket Chamber of Commerce (Twenty-ninth)	2	--	2	--	--	--	2	2	--	2	--	2	--	--	2	--	2	--	2	--	--	2	2	--	2	--	2	--
Providence Chamber of Commerce (Thirtieth)	10	--	10	--	10	--	10	--	10	--	10	--	--	--	--	--	10	--	10	--	--	--	10	10	--	--	--	10
Woonsocket Chamber of Commerce, Inc	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--
SOUTH CAROLINA																												
Greenville Chamber of Commerce	3	--	3	--	3	--	--	--	3	--	3	3	--	3	--	3	--	3	--	3	--	--	3	--	3	3	--	--
Spartanburg Chamber of Commerce	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	--	3	3	--	--	3	3	--	--	3	--	--
SOUTH DAKOTA																												
Aberdeen Commercial Club	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	--	3	3	--	--	3	3	--	3	--	3	--
Huron Chamber of Commerce	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--
Chamber of Commerce of Vermilion	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
Watertown Chamber of Commerce	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--
TENNESSEE																												
Chattanooga:																												
Chamber of Commerce	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	--	3
Manufacturers Association	1	--	1	--	--	1	--	1	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
Jackson Chamber of Commerce (Thirty one)	--	2	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	--	2	2	--	2	--	2	--
Knoxville:																												
Board of Commerce	3	--	3	--	--	3	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--
Southern Appalachian Coal Operators Association	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
Memphis Chamber of Commerce	10	--	10	--	10	--	--	10	10	--	10	--	10	--	10	--	10	--	10	--	--	10	--	10	--	10	--	10
Nashville:																												
Nashville Chamber of Commerce	7	--	7	--	7	--	7	--	7	--	7	--	7	--	7	--	7	--	7	--	--	7	7	--	7	--	--	7
Tennessee Manufacturers Association	5	--	5	--	5	--	5	--	5	--	5	--	5	--	5	--	5	--	5	--	5	--	5	--	5	--	5	--

Name of organization	Questions submitted																											
	1		2		3		4		5		6		7		8		9		10		11		12		13		14	
	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against
TEXAS																												
Beaumont Chamber of Commerce	--	--	--	--	--	--	5	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Corsicana Chamber of Commerce	3	--	3	--	3	--	--	3	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	--	--
Dallas Chamber of Commerce	10	--	10	--	10	--	10	--	--	10	10	--	10	--	10	--	10	--	10	--	--	10	10	--	10	--	10	--
Electra Chamber of Commerce and Agriculture	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
El Paso Chamber of Commerce	5	--	5	--	--	5	--	5	5	--	5	--	--	5	5	--	--	5	5	--	5	--	5	--	5	--	5	--
Fort Worth Chamber of Commerce	7	--	7	--	7	--	7	--	7	--	7	--	7	--	7	--	--	7	--	7	7	--	7	--	7	--	--	7
Galveston Commercial Association	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
Houston Chamber of Commerce	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	--	1	--	1	--	1	--	1	--	1
Paris Chamber of Commerce	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--
Port Arthur Chamber of Commerce and Shipping	3	--	3	--	--	--	--	3	3	--	3	--	--	3	--	--	--	--	--	--	--	--	--	--	--	--	--	--
San Antonio Chamber of Commerce and Business Men's Club	--	7	--	7	--	7	--	7	--	7	--	7	--	7	--	7	--	7	--	7	--	7	--	7	--	7	--	7
Texarkana Chamber of Commerce	4	--	4	--	4	--	--	4	4	--	4	--	4	--	4	--	4	--	4	--	--	4	4	--	4	--	--	4
Waco Chamber of Commerce	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	--	3
Wichita Falls Chamber of Commerce	6	--	6	--	6	--	6	--	6	--	6	--	--	6	--	6	6	--	6	--	6	--	6	--	6	--	6	--
UTAH																												
Brigham City: Box Elder Commercial Club	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--
Ogden Chamber of Commerce and Commercial Club	2	--	2	--	2	--	2	--	--	--	--	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--
Salt Lake City:																												
Chamber of Commerce and Commercial Club	--	9	9	--	9	--	--	9	9	--	9	--	9	--	9	--	--	--	9	--	--	9	--	--	9	--	9	--
Utah Manufacturers Association	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	--	--	1	--	1	1	--	--	1	--	1	--
VERMONT																												
Burlington Chamber of Commerce	2	--	2	--	--	2	2	--	2	--	2	--	2	--	2	--	--	--	2	--	2	--	2	--	2	--	2	--
VIRGINIA																												
Alexandria:																												
Chamber of Commerce	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--
Virginia Ice Manufacturers Association	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
Charlottesville: Southern Retail Furniture Association	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--
Lynchburg Chamber of Commerce	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--
Newport News Chamber of Commerce	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	--	3	3	--	3	--	3	--	3	--	3	--
Petersburg Chamber of Commerce (32)	2	--	2	--	2	--	2	--	2	--	--	2	2	--	--	--	2	--	2	--	2	--	2	--	2	--	2	--
Richmond Chamber of Commerce	6	--	--	6	--	6	--	6	6	--	6	--	6	--	6	--	--	6	6	--	6	--	6	--	6	--	--	6
Roanoke Chamber of Commerce	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--
WASHINGTON																												
Aberdeen Chamber of Commerce	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	--	--	1	--	1	--	--	--
Bellingham Chamber of Commerce	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--
Puyallup Commercial Club	--	1	1	--	--	1	--	1	1	--	1	--	1	--	--	1	--	1	--	1	--	1	1	--	1	--	--	1
Seattle: West Coast Lumbermen's Association (33)	1	--	1	--	--	--	1	--	1	--	1	--	1	--	1	--	--	--	1	--	1	--	1	--	1	--	1	--
Spokane Chamber of Commerce (34)	6	--	6	--	6	--	6	--	6	--	6	--	6	--	6	--	6	--	6	--	6	--	6	--	6	--	6	--
Tacoma Chamber of Commerce	8	--	8	--	8	--	8	--	8	--	8	--	8	--	8	--	8	--	8	--	8	--	8	--	8	--	8	--
WEST VIRGINIA																												
Bluefield Chamber of Commerce	2	--	2	--	2	--	--	2	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--
Charleston Chamber of Commerce	--	--	--	--	--	--	--	--	--	--	--	--	4	--	4	--	4	--	4	--	4	--	--	--	4	--	4	--
Clarksburg Chamber of Commerce	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--
Fairmont:																												
Chamber of Commerce	3	--	3	--	--	3	3	--	3	--	3	--	3	--	3	--	--	3	--	3	3	3	--	--	3	--	--	3
West Virginia Manufacturers Association	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
Parkersburg Board of Commerce	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--
Welch Chamber of Commerce	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
Weston Chamber of Commerce (35)	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	--	2	--	--	--	2	2	--	2	--	--	2
Wheeling Chamber of Commerce	4	--	4	--	--	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	--	--	--	--

Name of organization	Questions submitted																											
	1		2		3		4		5		6		7		8		9		10		11		12		13		14	
	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against
WISCONSIN																												
Algoma Chamber of Commerce	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
Appleton Chamber of Commerce	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--
Fond du Lac Association of Commerce	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--
Madison:																												
Association of Commerce	4	--	4	--	4	--	--	4	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	--	4	4	--
Wisconsin Manufacturers Association	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--
Milwaukee:																												
Chamber of Commerce	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	--	2	2	--	2	--	2	--
Knitted Outerwear Manufacturers Association, Western District	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
Milwaukee Association of Commerce	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	--	1	1	--	1	--	--	1
Wisconsin Retail Lumbermen's Association	4	--	4	--	--	4	--	4	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--
Nekoosa Chamber of Commerce	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1
Oshkosh Association of Commerce	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--
Racine Association of Commerce	4	--	4	--	--	4	4	--	4	--	4	--	4	--	--	4	--	4	--	4	--	4	--	4	--	4	--	4
Sheboygan Association of Commerce	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--
Superior Civic and Commerce Association	2	--	2	--	2	--	--	--	2	--	--	--	2	--	2	--	--	--	2	--	--	--	2	--	2	--	2	--
Waupun Association of Commerce	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
Wausau Chamber of Commerce	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--
WYOMING																												
Casper Chamber of Commerce	6	--	6	--	--	6	6	--	6	--	6	--	6	--	6	--	6	--	6	--	6	--	6	--	6	--	6	--
FOREIGN																												
Naples; American Chamber of Commerce of Italy	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--

(1) The El Dorado Chamber of Commerce qualified its affirmative votes on the fourth proposition by the provision that the public be heard in cases in which there was objection to voluntary consolidation.

(2) The San Francisco Chamber of Commerce, although voting as opposed to the fourth proposition, stated that it was favorable to voluntary consolidation.

(3) The New Haven Chamber of Commerce noted its approval of the tenth proposition with a reservation in favor of the repeal of the prohibition against the operation of railroad-owned ships through the Panama Canal. The New Haven chamber's affirmative votes on the eleventh proposition were qualified by eliminating the words "in the published tariffs" and "beginning at the centers of greatest congestion," in lines 2 and 4, respectively, of this proposition.

(4) The Norwich Chamber of Commerce qualified its negative votes on the fourth proposition by indicating that it would not oppose purely voluntary consolidations. The affirmative votes of the Norwich chamber on the fifth proposition were made subject to the proviso that the application of the proposed policy be left to the assent of the individual railroads. On the eighth proposition the affirmative action was qualified by the proviso that to the Army Engineers be added practical business and transportation experts with whom final decision should rest.

(5) The Standard Container Manufacturers, although voting in favor of the third proposition, limited its action to an approval at the present time of the provisions of the transportation act, while expressing doubt as to the soundness of the principle of recapture.

(6) The Bloomington (Ill.) Association of Commerce qualified its affirmative votes on the fourteenth proposition by providing that the special tax levies for highway maintenance be made subject to State laws.

(7) The National Furniture Warehousemen's Association, voting in approval of the fifth proposition, stated that it was opposed to common ownership which would eliminate competition.

(8) The National Hardwood Lumber Association, although voting in opposition to the third proposition, indicated that it would not be opposed to the committee's recommendation if other provisions of the transportation act were retained.

(9) The Atchison Chamber of Commerce, although voting in favor of the second proposition, stated that it was opposed to section 5 of the transportation act, which provided for the consolidation of railroad properties into a limited number of systems.

(10) The New Orleans Association of Commerce, voting in favor of the second proposition, qualified its votes by the limitation that the provisions of the transportation act be continued for at least the present session of Congress. Although not voting on the fourth proposition, the association stated that it was in favor of legislation that would make easier voluntary consolidation, but was opposed to legislation already introduced. In voting affirmatively on the ninth proposition, the association desired to qualify its votes by citation of the Ransdell and Dennison bills. On the fourteenth proposition the association declined to register its view on the ground that the matter was for State rather than for interstate regulation and, further, that a greater proportion of taxes should be paid by common carriers than by other users of motor vehicles.

(11) The Boston Chamber of Commerce, voting in favor of the third proposition, indicated its belief that the principle of recapture was not an essential part of the rule of rate making. While voting in the

affirmative on the eleventh proposition, the Boston chamber dissented from that portion of the recommendation which provided that the carrying out of the proposal be commenced in the centers of greatest congestion with the thought that the service should start where, in the opinion of the carriers, it could be tried out most successfully. In lieu of voting on the thirteenth proposition, the chamber advised that, in its opinion, experience with the regulation of motor-truck competition had not been sufficient to warrant the determination of a general policy; that until rail lines were able to render equal service, no restriction should be placed on the operation of motor vehicles on the highways.

(12) The Holyoke Chamber of Commerce qualified its affirmative votes on the eleventh proposition by the proviso that the word "carriers" be construed as referring to the railroads. In qualification of its affirmative votes on the twelfth proposition, the Holyoke chamber inserted a proviso that the recommendation be directed to the railroads.

(13) The Springfield Chamber of Commerce, although voting affirmatively on the fourteenth proposition, expressed doubt whether the road users should pay more than an equitable portion of the cost of maintenance.

(14) The Greenwood Chamber of Commerce, while voting as opposed to the sixth proposition, expressed the view that although believing in the principle of the committee recommendation, it favored present effort to enforce long and short haul provision by special legislation. The Greenwood chamber's affirmative votes on the eighth proposition were qualified by the proviso that there be no interference with or discontinuance of the work and authority of the Mississippi River Commission.

(15) The Montana Bankers' Association qualified its affirmative votes on the fourteenth proposition by providing that road users should pay "most of" rather than the "entire" cost of highway maintenance.

(16) The Auburn Chamber of Commerce recorded its votes in the affirmative on the fourth proposition with the qualification that the committee's recommendation be not deemed as favoring an amendment at the present time to the transportation act to provide for compulsory consolidation of the railroads. The Auburn chamber's votes in favor of the seventh proposition were qualified by striking out the word "relative" as applied to freight rates, in the belief that the proposition should apply to all freight rates, both relative and straight.

(17) The Buffalo Chamber of Commerce stated that it did not vote on the fourteenth proposition on the ground that the recommendation referred to a State rather than a Federal function.

(18) The Gloversville Chamber of Commerce voted against the fourteenth proposition, with the recommendation that road users pay a reasonable and equitable share of the cost of highway maintenance.

(19) The Merchants' Association of New York, in voting affirmatively on the eighth proposition, indicated its belief that the program suggested in the recommendation should be carried out by a commission composed of Army Engineers and of experts from commercial and transportation fields, thus ensuring in the commission a knowledge of the needs of commerce and of the practical transportation problems as well as of the engineering features.

(20) The Rochester Chamber of Commerce, voting affirmatively on the third proposition, indicated that this action was taken without discussing the necessity for the recapture clause or the principles involved, in the belief that the essential provisions of the transportation act should not be disturbed for the present. While voting affirmatively on the eighth proposition, the Rochester chamber recorded its belief that the proposed plan could be carried out more advantageously by a commission or board composed of Army Engineers and experts in the commercial and transportation fields.

(21) The Rome Chamber of Commerce qualified its affirmative votes on the third proposition by specifying that the principles of recapture should be maintained until there has been further experience.

(22) The Troy Chamber of Commerce qualfied its votes in the affirmative on the second proposition by excepting all matters properly coming under the fourth proposition.

(23) The Akron Chamber of Commerce, although voting as opposed to the fourteenth proposition, expressed the opinion that common carriers such as trucking companies should pay a larger proportion of the cost of highway maintenance.

(24) The Newark (Ohio) Chamber of Commerce voted as in favor of the fourteenth proposition with the qualification that an equitable share of the cost of highway maintenance should be obtained by the levy of special taxes upon those road users alone who operate for profit.

(25) The Tiffin Chamber of Commerce qualified its vote on the sixth proposition by specifying that—rates and problems of regulation should be handled by Federal agencies only.

(26) The Philadelphia Bourse, although not voting on the third proposition through opposition to the principle of recapture, expressed the view that the principle, if adopted, should be applied to periods of not less than five years in the belief that there was at present no sufficient or effective way of making up deficiencies in realizing the full rate authorized by the Interstate Commerce Commission.

(27) The National Pipe and Supplies Association qualified its affirmative votes on the fourteenth proposition with the condition that the recommendation refer solely to freight and express transportation.

(28) The Reading Chamber of Commerce, voting affirmatively on the fourteenth proposition, qualified its action by the provision that road users should pay an equitable share of, rather than the entire, cost of highway maintenance.

(29) The Pawtucket Chamber of Commerce, in qualification of its affirmative votes on the fourteenth proposition, specified that the special taxes mentioned in the recommendation be in proportion to the use and damage done to the highways.

(30) The Providence Chamber of Commerce, in voting affirmatively on the first proposition, qualified its votes with the proviso "if it means simply cooperation." The Providence chamber's affirmative vote on the fourth proposition were recorded subject to the reservation that the changes to be brought about through new legislation should not substantially affect the underlying purposes of the Interstate Commerce Commission.

(31) The Jackson Chamber of Commerce voted in opposition on the eighth proposition, adding that it is opposed to the proposition if it means preferential rates for river cities. The affirmative votes of the Jackson chamber on the tenth proposition were qualified by the proviso that the recommendation does not give undue advantage to river cities.

(32) The Petersburg Chamber of Commerce, in lieu of voting on the ninth proposition, indicated that it was opposed to the principle of governmental ownership and control in competition with private enterprise.

(33) The West Coast Lumbermen's Association, refraining from voting on the third proposition, stated that, in its belief, while rates should be reasonable, the net revenues of railroads should be such as to encourage investment and maintain credit.

(34) The Spokane Chamber of Commerce, voting in favor of the second proposition, qualified its action with the proviso that the vote should not be construed as in any manner opposing the provisions of the Gooding bill amending the fourth section of the transportation act of 1920.

(35) The Weston Chamber of Commerce, in voting affirmatively on the third proposition, indicated that as the recapture clause was contained in the present transportation act it approved the committee's recommendation although the provision was believed to be fundamentally wrong in principle. In connection with its negative votes on the fourteenth proposition, the Weston chamber expressed the belief that such tax should not be levied upon the ordinary or individual user of improved highways.

ORGANIZATIONS NOT VOTING BUT FILING

The Winsted Chamber of Commerce explained that it refrained from voting on the referendum in the belief that the railroads should be permitted to work out a solution of their problems without additional legislation.

The Sycamore Chamber of Commerce expressed the belief that railroad conditions should not be disturbed in any way and that the transportation act should be given an opportunity to demonstrate its effectiveness.

The Corvallis Chamber of Commerce stated that, in its opinion, no changes should be made at the present time in the Esch-Cummins law.

Ballots received too late

Name of organization	Questions submitted																											
	1		2		3		4		5		6		7		8		9		10		11		12		13		14	
	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against	For	Against
CALIFORNIA																												
Concord Chamber of Commerce	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	--	1
Wilmington Chamber of Commerce	2	--	2	--	2	--	2	--	2	--	--	--	2	--	2	--	--	--	2	--	2	--	2	--	2	--	2	--
ILLINOIS																												
Chicago:																												
American Face Brick Association	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
International Association of Milk Dealers	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--
Woman's Association of Commerce	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
KANSAS																												
Hutchinson Chamber of Commerce	5	--	5	--	5	--	5	--	5	--	5	--	5	--	--	5	--	5	5	--	5	--	5	--	5	--	5	--
Wellington Commercial Club	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
MARYLAND																												
Hagerstown Chamber of Commerce	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--
MICHIGAN																												
South Haven Chamber of Commerce	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
NEBRASKA																												
York, York County Commercial Club	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--
OHIO																												
Chillicothe Chamber of Commerce	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
Cleveland, the American Malleable Castings Association	--	1	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--
PENNSYLVANIA																												
Indiana Chamber of Commerce	2	--	2	--	2	--	2	--	2	--	--	2	2	--	2	--	--	--	2	--	2	--	2	--	2	--	2	--
Philadelphia Commercial Museum	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--	4	--
TENNESSEE																												
Memphis Lumbermen's Club	2	--	--	2	--	--	2	2	--	2	--	--	2	2	--	2	--	--	2	--	2	--	2	--	--	2	2	--
TEXAS																												
Galveston Cotton Exchange and Board of Trade	3	--	3	--	3	--	3	--	3	--	3	--	3	--	3	--	--	3	3	--	3	--	3	--	3	--	3	--
VIRGINIA																												
Norfolk-Portsmouth Chamber of Commerce [1]	8	--	8	--	8	--	8	--	8	--	8	--	8	--	8	--	--	8	--	--	--	8	--	8	--	--	--	8
WASHINGTON																												
Olympia Chamber of Commerce	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--	2	--
WISCONSIN																												
Milwaukee, the National Retail Tea & Coffee Merchant's Association	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--	1	--

[1] The Norfolk-Portsmouth Chamber of Commerce, voting in favor of the second proposition, qualified its action by the proviso that the Railroad Labor Board should have the authority necessary to make its decisions effective.

RAILROAD CONSOLIDATION

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Wednesday, June 9, 1926.

The committee met at 10 o'clock a. m., Hon. James S. Parker (chairman) presiding.

The CHAIRMAN. The committee will please come to order.

STATEMENT OF JOHN E. OLDHAM, BOSTON, MASS.

Mr. OLDHAM. Mr. Chairman, I am here in a personal capacity. I do not represent any special interest. The statement which I have prepared I prepared at the suggestion of Judge Thom, but I do not feel that in any sense of the word I represent the railway executives, of which he is the counsel.

The CHAIRMAN. Proceed.

Mr. OLDHAM. The statement which I have prepared and submit for your consideration is not intended to be a discussion in detail of the different provisions of the bill before you, but it deals rather with the considerations which resulted in making the provisions for further railroad consolidations so prominent a feature of the transportation act; with the progress which has already been made in carrying out the provisions of the act; with the inadequacy of the present law to carry out the intended purpose; and with the general nature of the changes in the existing law which seem to be essential to secure further progress.

It may not be out of place to state that my interest in what is commonly termed the railroad problem and my study of certain phases of the situation has covered a period of more than 10 years. For a number of years as a member and part of the time as chairman of the railroad committee of the Investment Bankers Association, I was called upon to acquaint myself with the financial aspects of the railroad situation as they existed during the years immediately preceding the war, especially from the viewpoint of credit. During the entire period of 1910–1915 the tendency of railroad earnings had been downward, railroad credit had become impaired, and confidence in railroad securities had been seriously shaken. It was generally conceded that unless the downward tendency of railroad earnings could be checked and confidence restored the time was near at hand when the railroads generally would be unable to furnish the adequate and efficient service reasonably required of them.

While opinions differed as to the causes of this situation, nevertheless conditions were considered so serious that Congress recognized the need for some constructive action and it began its investigation of the subject through the creation of the Newlands committee. With the hearings and investigations of this committee I was required to keep in touch because of my work in connection with the Investment Bankers Association.

Thereafter when we entered the war the Newlands committee gave way to other committees of Congress which continued to study the whole problem with particular reference to a determination of the terms and conditions under which the railroads should be taken over by the Government. As representing the association, I followed closely these proceedings. Still later at the close of the war the study of Congress was concerned with the creation of legislation which would provide for a system of regulation more satisfactory than had previously existed, so that the roads when returned to private management could be more effective agencies of transportation. Throughout this phase of the matter also I continued my interest in the questions involved; so that I think it is fair to say that I have followed the discussion and development of the situation practically without interruption from the time that Congress began its studies before the war.

The result of the prolonged and thorough investigations and studies of Congress was the conclusion quite generally accepted that the public would be served best by private operation of the railroads, provided a sound system of public regulation could be devised and that private operation under public regulation should be continued as the permanent policy of the Nation. The consideration which has been given to the matter had made it clear that some changes in the system of regulation must be made to enable the railroads as a whole to secure that degree of prosperity which would make it possible for them to provide facilities required by the growing transportation needs of the country. The transportation act which was the result of some six years of congressional study, therefore endeavored to create a system of public regulation which would fulfill this purpose—a system necessarily different in essential respects from that which had existed before the war. The most important change related to the policy and method of determining the rates to be paid by the users of railroad service and involved the placing upon the Interstate Commerce Commission full responsibility for establishing rates sufficient to support the railroads and maintain their credit. The rate-making sections of the act provided and stipulated in effect that the public should pay in rates an amount sufficient to cover the full cost of railroad service as a whole including a fair return to the owners of all property which was used in the service.

For reasons which are well understood, it was found necessary to adopt the so-called group method of rate making by which rates in a given territory should be so made as to produce income which as a total would be sufficient for the combined needs of all the railroads in the territory; that is, rates were to be made based on average conditions, even though it was evident that such rates would not produce income sufficient for the roads which were less favorably situated than the average and would produce more income than was required for roads more favorably situated than the average. Nevertheless, it was evident that if this method of rate making were to be deemed successful it must be possible for substantially all roads, if efficiently operated, to attain similar results; and it was equally evident that such similarity of results could not be expected or attained when conditions surrounding a large number of roads varied from the average upon which the rates were based. In every section of the country there were many individual roads which operated

under conditions which varied substantially from the average and it was clearly recognized that because of this fact these roads would not fare alike under the group method of rate making, even though this method did produce income sufficient for the roads considered as a whole.

The so-called consolidation sections of the transportation act were adopted, therefore, for the purpose of grouping the many railroads into a few systems, the less favorably situated roads to be combined with the more favorably situated so as to make systems of like characteristics with the result that all systems which were to serve the country in the future would have equal opportunity to prosper under the rates which were made with the view to meeting average conditions of operation.

To carry forward the policy of railroad unification the transportation act stipulated that the Interstate Commerce Commission should first prepare and publish a tentative plan for the consolidation of the many railroads into a few systems, each one of which should have so far as possible average characteristics. Such a tentative plan was published by the commission in 1921. Thereafter, following the procedure laid down by Congress, extensive hearings upon the whole subject of consolidations were held over a period of more than two years in different parts of the country. At these hearings not only the railroads but the public generally through various commercial and industrial organizations presented evidence and information as to the subject under discussion. The result is that the Interstate Commerce Commission is now possessed of a vast amount of information which was not before available to it regarding the situation and conditions surrounding the operation of all of the principal railroads of the country, as well as relating to the industrial and commercial facts and needs of all parts of the country.

The commission has reported and testified on different occasions that it finds it impracticable to prepare and publish a complete plan. It seems to me too much to expect that a commission of 11 men could come to the same conclusion as to the best plan of grouping every carrier in the United States into a few railroad systems. In so large a field there is room for honest difference of opinion as to the exact procedure which will secure the best results and it appears likely that for all practical purposes equally good results may be expected from each of several possible groupings.

Thus, despite the facts that the transportation act is now six years old; that the tentative plan of consolidations has been published; that hearings have been held upon it; that the Interstate Commerce Commission has secured a great amount of valuable information constituting a record indispensable for future decisions by the commission; and that there has grown up not only a belief that consolidations can be made which will serve the purpose contemplated by the act, but also a willingness on the part of many railroads to undertake such consolidations—despite all these facts which it seems to me show a great amount of progress in the consolidation program no major consolidations of railroads have taken place.

Moreover, the commission has now concluded that the existing law does not authorize or permit it to approve individual consolidations prior to its adoption of a complete plan for all consolidations.

These two facts, the impracticability of devising a single comprehensive plan for all consolidations, and the inability of the commission to approve any consolidations until such a plan is devised and adopted seem to me to constitute the first barrier to the creation of such railroad systems as are essential. This barrier can be removed by legislation which will at least postpone the adoption of a complete plan and will authorize the commission in the meantime to approve such consolidations as it finds to be in the public interest. My understanding is that this bill provides for such postponement and such organization.

Again, the transportation act has been interpreted to mean that the method of effecting the consolidations to be provided for in the comprehensive plan of the commission is restructed to the actual merger of the properties under one corporate ownership. Under such an interpretation the commission is not permitted in making its complete plan to make use of such devices as leases, trackage rights, and control through stock ownership, even though the purpose for which the consolidations are intended would be as well or better served thereby, and even though through this restriction it might be forced to adopt a plan with less desirable groupings than would otherwise be the case.

The use of these devices is not an untried procedure since many of the most successful and efficient railroad systems of the country, such as the Union Pacific, the Santa Fe, the New York Central, and the Pennsylvania have been created, in part at least, by their use where actual mergers have not seemed advisable or have not been possible. If the adoption of a comprehensive plan is now postponed, it seems to me that it should be made clear that these devices of proved value are made available in such unification proposals as may be laid before the commission. My understanding is that this bill clarifies this situation and removes any doubt which may have existed as to unification by the various methods which have heretofore proved useful.

The bill before you, as I understand it, also creates certain additional protection to minority interests and provides for the new systems such corporate powers as are necessary to overcome the difficulties arising from the conflict of state laws. Thus it seems to me to remove other existing barriers to progress.

I do not hestitate to say that no further substantial progress in the way of railroad unification is possible until additional legislation shall be enacted by Congress which will remove the difficulties here indicated. Thus, it is not too much to say, I think, that the most successful results to be secured under the system of regulation established in the transportation act is halted and is likely to remain halted, not because the fundamental principles of the act have been found to be unsound, but because some of the details of that act have been found to be inadequate to permit the carrying out of the sound procedure which is its intent. Thus, as I see it, the necessity now is not for a modification of the underlying principles of the transportation act but merely for the passage of legislation which the evidence of the last five years shows to be necessary for making these principles and procedure actually effective.

I am convinced that the essence of legislation now required and which is provided by the bill before you, is that the publication of a complete plan for all consolidations be postponed; that the commission be authorized to approve individual consolidations when found to be in the public interest prior to the adopton of any comprehensive plan; that the railroads under the guidance and with the approval of the commission be permitted to unify their properties and create new systems not only through the process of actual mergers but by the use of such other devices as leases, trackage rights and control through stock ownership; that minority rights be further safeguarded and that adequate corporate powers be assured.

It is my belief that the desirability and, in fact, the necessity of railroad consolidations is now so clearly recognized by many railroad executives that if this bill is passed steps will be taken in the near future to effect railroad consolidations of importance to the whole country. When these consolidations are completed there will be eliminated many railroads which can not succeed in providing adequate service under existing conditions. Thus, many of the difficulties involved in the problem of regulation will be simplified or overcome, and we shall be sensibly nearer a realization of the conditions which are essential for the successful administration of the transportation act.

The CHAIRMAN. Are there any questions?

Mr. HUDDLESTON. Witnesses before us have testified that there is an urgent necessity that railroads which consolidate shall have lifted from their corporate limitations restrictions placed on them by the States in which they are chartered, such as forbidding them to operate in other States or to acquire competing lines or to consolidate with other corporations. You refer to that subject also.

Mr. OLDHAM. I refer to it. If that is a difficulty, I do not pretend to be competent to pass upon the legal phase of the various restrictions which exist, but it seems to me that if there are those restrictions, you are prevented from carrying out the policy which is laid down by the transportation act.

Mr. HUDDLESTON. Then you would not care to express yourself as to whether you think that is the chief need for this measure?

Mr. OLDHAM. I should not say it is the chief need. I should say that it is one.

Mr. HUDDLESTON. This bill would confer upon corporations chartered under laws of the different States powers which they do not now enjoy. In other words, it would give them franchises and corporate rights which the laws of those States do not give them. You understand that?

Mr. OLDHAM. I understand that.

Mr. HUDDLESTON. Do you favor the Federal chartering of railroads?

Mr. OLDHAM. Again you are dealing with a machinery which I would not pretend to pass judgment upon. I am in the banking business. I am not a lawyer. I am not competent at all to pass upon constitutional questions.

Mr. HUDDLESTON. I did not refer to its technical aspect, to its constitutional aspect, but merely as a matter of policy.

Mr. OLDHAM. As a matter of policy, I think these corporations should have the power to do what is contemplated by the act.

Mr. HUDDLESTON. One thought that occurs to me on that point is that this bill seems to confer certain powers and advantages on these corporations without corresponding responsibilities and duties and limitations. In other words, it seems to me to give these corporations the benefit of a Federal charter without hedging it about in such a way that we would undoubtedly do if we were doing that thing directly. Do you distinguish in policy between doing what this bill proposes to do and a direct Federal charter of the railroads?

Mr. OLDHAM. That is a phase of the question I would not be competent to discuss with you. I feel, if you are going to have consolidations, there must be the power conferred from some source to allow these railroads to do the things which the transportation act intends that they shall do to merge these properties.

Mr. HUDDLESTON. The second point that I believe you made was with reference to the protection of minority interests. Do you feel that this bill sufficiently protects minority stockholders?

Mr. OLDHAM. I have read the bill, and so far as I am able to judge, I do not know how you could provide more adequately for them than you have provided.

Mr. HUDDLESTON. It authorizes the condemnation of minority stock?

Mr. OLDHAM. Yes, sir.

Mr. HUDDLESTON. In the exercise of the right of eminent domain by condemnation; and it involves what to me is a very difficult legal question, but on which I would not ask you to speak, in view of what you have said. I was wondering whether it is considered fair and just toward a minority stockholder, generally speaking, to require him to allow his stock to be appraised and taken at a valuation, by other private interests, because it happens to suit them.

Mr. OLDHAM. They are taken in the public interest. In other words, this policy of consolidation is to be carried out, and I do not think there is any more injustice in it than for a minority to hold up a large majority.

Mr. HUDDLESTON. Of course, a condemnation of property is a very harsh thing. It is offensive to us all to just reach out and take a man's property, whether it be a security or a physical property, and it must be, in justice, very carefully safeguarded. We are here by this measure turning that subject over to a jury to be composed of the Interstate Commerce Commission—we call it a board of appraisers, I believe—without giving them any specific directions, simply directing them to determine the value, without reciting the factors that they shall consider in reaching that value. Of course, everybody knows it is one of the hardest things anybody can try to do, to tell the value of a share of stock in a corporation, particularly in a railroad corporation.

Mr. OLDHAM. If the law is deficient in that respect, to provide full justice to minority stockholders, I hope some way will be found to revise it so that everything is done to fully protect their interests. Whether the law does everything possible, I am not competent to say.

Mr. THOM. Mr. Huddleston, in connection with your question, I should like to say that the Supreme Court has held in the Monongahela case (148 U. S.), that Congress can not prescribe the factors.

Mr. HUDDLESTON. Can not?

Mr. THOM. Yes; that that is a judicial question and must be referred to the courts. In that case they had undertaken to prescribe a factor which should be omitted. They said there should be no valuation of the franchises, and that went to the Supreme Court. There the whole subject was reviewed in a most interesting way, and it was determined that Congress could not legislatively consider the question of value; that that was a question which the court would have to decide, and that Congress could not prescribe the factors to be considered.

Mr. HUDDLESTON. I have in my mind that there are many kinds of value, and just to say "value," without anything else, is not always very enlightening. In the case of Smyth against Ames we had a discussion of the value of the railroad for rate-making purposes, and one of the factors which the court said must be considered was the market value of the stock, as I recollect. Of course, that was not much of a criterion of value—that is, the stock itself. I am frank to say that I do not know whether the market value of stock would be a factor that a jury would be permitted to consider in such a condemnation.

Mr. OLDHAM. I think, in the last analysis, that the measure of value would be earning capacity.

Mr. HUDDLESTON. You think it would be the earning capacity?

Mr. OLDHAM. Yes, sir.

Mr. HUDDLESTON. The difficulty about taking the earning capacity of a public utility is that it is either what the traffic will bear or what the regulating authorities will permit it to earn.

Mr. OLDHAM. Exactly what it will earn under the rates prescribed by the commission, and what it may be expected to earn. That will take in a history of its past as a basis for the future; perhaps potential earning capacity which may not be shown, but taking all the facts into consideration, what can be relied upon as the annual earning capacity. I think you have plenty of measures by which you can determine value on that basis.

Mr. HUDDLESTON. Leaving that point: I was considerably impressed by your discussion of the purposes of the transportation act, from which I drew an inference that your knowledge of that act was not based entirely on merely reading it and seeing how it has worked. There seemed to be an implication that you had a first-hand knowledge of the purpose for which the bill was passed. May I ask the source of that?

Mr. OLDHAM. In the course of my business I became a member of the Investment Bankers' Association, and quite early in joining that association I got into committee work, public utilities first, and railroads next. About that time the question of this very unsatisfactory railroad situation came up.

I made numerous reports to the association, studied that question, and came to certain conclusions.

Then I followed very closely all of the hearings, I think, in relation to the taking over of the railroads under the Federal control act, and all those questions which were threshed over, and it became very clear, I think to everybody, that the railroads, when they were returned to the private owners should be returned under a system of regulation which would enable them to prosper.

One of the primary things, of course, was the matter of rate making. That matter was discussed before the House committee and before the Senate committee. It was a subject of discussion for a number of years during the war and immediately after the war, and I was brought into that discussion, as I say, through the work which I did.

I wrote more or less on the subject, and I very early in the game came to the conclusion that the way out of the situation was to find a satisfactory system of rate making, that the public should pay in rates the cost of service and no more, and that so long as you are going to preserve competition you could not make rates with a view to the requirements of each individual road. You would make them with a view to the requirements of groups of roads and each road under that fair average rate would have to take its chance.

Now, it was recognized that that would not alone solve the problem. The only way to solve the problem was to create a new kind of system of transportation made up of roads of such a similar character that they could get substantially the same results under the same or uniform rates. Then you could have real competition. It would be a competition of equals and there would not be very much variation, if they were efficiently operated, in the results obtained.

After that I worked on committees with the United States Chamber of Commerce, and we went all over that subject and some one has told me that that report has been filed with you.

On that committee were shippers, railroad men, economists, and I think that every phase of the situation was gone into. We all gradually came back to the same idea, that it was only through consolidations that you could work out a system of regulation which seemed to be fair and generally acceptable; that the system of regulation produced was not applicable to a system of transportation made up of units with varying characteristics, and if we are going to get the best results out of regulation, in fact, satisfactory results out of regulation, it was necessary to reconstruct our transportation system.

Therefore it was provided in the act that the Interstate Commerce Commission should prepare a plan and group the railroads with a view to creating roads of similar characteristics.

Of course, there were a great many people who believed that that was an ideal which was absolutely impossible. I think the result of the preparation of the tentative plan and the hearings and the evidence which was taken was that there is much more unanimity of opinion now that consolidations provide an entirely feasible way to work out the railroad problem.

I do not know whether that covers your question or not. That has been my interest in it.

Mr. HUDDLESTON. Can you tell us the origin of the grouping plan? Who originated it, or how did it come about?

Mr. OLDHAM. I do not know. I think that Senator Cummins was the first to state publicly that he believed this thing could be worked through consolidation.

Before the transportation act was passed, I tried, by putting railroads together, to make groups to see whether or not they would carry out that purpose, and before the transportation act was passed, I discussed those ideas with the Railroad Administration and with the United States Chamber of Commerce.

I think that the first plan was published by the United States Chamber of Commerce and Nation's Business on certain groupings that I worked out, not with the idea that those were the groupings which would be final, but simply as a demonstration of the feasibility of the idea that you could work out systems which had similar characteristics.

Mr. NEWTON. When was that?

Mr. OLDHAM. I should say that that was in January, 1920.

Mr. HUDDLESTON. I did not refer to grouping for consolidation, but grouping for rate-making purposes.

Mr. OLDHAM. I think that that was conceded almost from the start—that is, that you had to make average rates, which would be group rate making. It is conceded that the railroads as a whole are entitled to a fair return. That would mean that railroads as a group are entitled to a fair return.

The we have in the transportation act the specific provision that the country should be divided into rate-making districts.

I do not know whether that is what you mean, but they provided that the country should be divided into rate-making districts for the purpose of making the rates for groups, which naturally would be an average rate. I think even before the transportation act went into effect that the commission used as a measure for rates combinations of railroads in the eastern district. I think they used the New York Central, the Pennsylvania, and the B. & O. as representing a fair average—that is, that a fair average rate for those three roads would be a fair average rate for the entire eastern district, because those roads conformed strictly to the average of the district.

Mr. HUDDLESTON. This thing has been criticized, impliedly at least, with relation to its bearing on the recapture clause, the theory being that roads which earned an excess by consolidating with roads of lesser earning capacity would be able to plow their excess into other roads and thereby evade the recapture clause. What have you to say on that?

Mr. OLDHAM. My thought in regard to that would be this: That you are simply providing a way to make an automatic distribution of earnings which would be fair to the road.

Mr. HUDDLESTON. This consolidation would not be in such manner as to afford the distribution in the manner that it would be made under the recapture clause, but would be designed for the purposes of the railroad company. For instance, the funds recaptured would be loaned by the Interstate Commerce Commission in a certain way.

Mr. OLDHAM. You mean under the existing law?

Mr. HUDDLESTON. Yes; which would not necessarily or probably be the way that it would be expended if the roads were permitted to make their own election as to where the excess should go.

Mr. OLDHAM. I think that the evidence or the discussion which you will find in the Senate hearings in May, 1924, makes it clear that so far as the members of the Senate committee are concerned, they look upon this recapture as something which would exist in the interim, during the period when these consolidations were being worked out, and after these consolidations were worked out, if you are able to create a system such as was proposed, there would be very little to recapture, because the earnings would be substantially alike for all of the systems engaged in transportation.

99790—26——20

There you get the best results from your competition. Of course, so far as recapture is concerned, in my judgment, it does not amount to anything anyway, except as a kind of club. It is absolutely impractical in operation.

Mr. HUDDLESTON. Why is that so?

Mr. OLDHAM. In the first place a road is entitled to a fair return, provided it is efficiently operated. We are speaking now of the roads to which the recaptured earnings go.

You have got to determine whether a road is efficiently operated. You have got to determine whether it is overmaintained, and all those various factors have got to be determined. You have also got to determine a very important thing as to the value on which you are going to base recapture.

Mr. HUDDLESTON. Under the grouping system, certain roads are earning a very large percentage and some as high as 25 per cent, if I recollect rightly.

Mr. OLDHAM. If that is so, it is on a very few roads of very small earning capacity. The roads, I venture to say, which handle the very large percentage of the business of the country—I do not know whether they are earning that, but they are not showing in their statements any substantial earnings above the 5¾ per cent.

If you will take the statement that was made by former Commissioner Potter and examine it, you will find a few small roads that earn in excess of 6 per cent. You will find a few small roads that earn under 3 per cent, but the great body of roads, the roads that produce the large amount of earnings, earn from 3½ to 4 per cent and up to 5¾. His charts might be quite illuminating.

Mr. HUDDLESTON. I happen to know that during 1925 the New Haven, which is not considered a prosperous road, earned above 6 per cent, and I think it will be found that some of the larger and more important systems earn very substantially above that.

Mr. OLDHAM. I just ask for information, but that statement surprises me very much; that is, what you say in regard to the New Haven, because in the first place the value has not been determined, and any values which I have seen would not indicate any such earning as being over 6 per cent.

Mr. HUDDLESTON. My memory may be at fault, but we have a bill pending before us on the subject of refunding the loans to railroads, and according to a statement from the Interstate Commerce Commission which I received in order to see which of these debtor roads were earning more money on the money that they owed the Government than they were paying interest, and I found that quite a number of them were earning some as high as 8 per cent when they were paying us 6 per cent. It is my recollection that the New Haven was one of them. I am not absolutely sure on that point, but I know that I was agreeably surprised to find the high rate of earning during 1925 on the New Haven.

Mr. OLDHAM. The New Haven has been doing very well, but I think, according to any valuation that they might get from the commission, it would be difficult at least for me to conceive that they were earning that much. I should like to check up before making any statement.

Mr. HUDDLESTON. Your idea, then, is that the amount subject to recapture is unimportant?

Mr. OLDHAM. My idea is that the facts on which you would determine recapture, the amount of work involved, and taking into consideration all those things—I do not think it will ever be a very important factor. I think you will find—I spoke of there being a kind of interim in the matter. It has been Senator Cummins's idea from the beginning, and I think that of others members of the Senate committee, that when you got these consolidations completed, that that feature would be repealed. There would be no excuse for its existence, and I quite agree with that.

Mr. HUDDLESTON. The recapture clause was expected to be of benefit to the least prosperous roads and they, of course, would be the last to be taken into consolidations.

Mr. OLDHAM. I think there is a good deal of misconception as to that. I have made the statement heretofore, that in effect you would be recapturing under the law from some of what we call the weak roads for the benefit of some of those that we call the strong roads.

What I mean by that is this: Take some of the southwest roads, without mentioning any of their names. The cost of construction on the Federal valuation, we will say, is fifty or fifty-five thousand dollars per mile. The earnings per mile are fifteen or sixteen thousand dollars. The cost of construction of some of our larger systens, we will say, in the Northwest—taking the Chicago & North Western as an illustration—is up nearer $81,000. The earnings per mile are not materially different, from which it naturally follows that if they have the same operating ratio and get the same amount of net out of the same amount of business, they would have a smaller investment over which to spread it.

We have been misled a good deal on what these strong and weak roads are, and the roads from which we are going to recapture. But the fact is that many are weak because of their financial structure and overcapitalization, and not because they can not earn that fair return on the value of the property.

The roads that did not have or do not have large terminal expense, but are line-haul roads, that do not enter the large cities, whose cost of construction has been relatively light, whose grading has been light, those are the roads that are going to be made to pay recapture and not the roads of the type of the Burlington and the Chicago & North Western; you are not going to recapture from those roads at all.

Mr. NEWTON. The Burlington?

Mr. OLDHAM. The Burlington, in my judgment.

Mr. NEWTON. I always understood that the Burlington earnings were high.

Mr. OLDHAM. Not on the value of their property, but on their capitalization. It is one of those lightly capitalized roads. That is why you get misled at times.

We may have had ideas about these things, but it is only recently, as the valuation work undertaken by the commission has become more nearly completed, that we have been really able to get the facts of the situation. A road that is very conservatively capitalized obviously has a low book value, and an overcapitalized road has a high book value.

Now, you may be able to take the book value of a large group of roads, some over and some under and arrive at a reasonably fair

average, but when you come to apply it to the individual roads, it is very easy to get misled.

Now, whether the Federal valuation is right or not, I do not pretend to pass upon, but I do think that it is of very great value for relative purposes, for comparing one road with another, because all roads are put upon the same basis, and so if you are figuring from the standpoint of the roads, from which you get recapture and those from which you could not recapture, that data would be very helpful in showing possibilities.

Mr. HUDDLESTON. I was about to express this thought, that the recapture clause was intended primarily for the benefit of the unprofitable and needy roads, which it seems to me, would be the last to be accepted in a consolidation proceeding.

This measure would defeat, to an extent at least, that purpose of the recapture clause.

Now, if we assume that there are substantial funds subject to recapture, and that there are weak and unprofitable roads which would not be included in consolidations, would not be desirable members of consolidations, as to those roads that purpose would be defeated.

I want to ask you whether you think it is well to depart from that purpose, or continue to hold to that purpose, requiring strong and profitable roads to contribute something to the support of the weak and unprofitable roads?

Mr. OLDHAM. For present purposes, I would not for a moment think it desirable to repeal the recapture provision, but let it work itself out. It does not seem to me that it has any bearing upon this situation and this bill.

Mr. GARBER. I should like to ask a question or two.

The roads at the present time are consolidated into five different groups for rate-making purposes, are they not?

Mr. OLDHAM. Well, my impression was that it is largely three. I would not venture to say what subdivisions they make.

Of course, there is the eastern and the western and the southern. Now, for certain purposes, the commission does make some additional groupings, such as the New England group, the Central Eastern trunk lines, the Southern and Pocohontas district, the Northwestern region, the Central Western and Southwestern, and then they have a Mountain Region.

My impression is that rates are based on average conditions with three large districts taken as a whole. How far they depart from that I do not know.

Mr. GARBER. From your long study of the question of consolidation, do you believe that consolidation will be as extensive or will work out as extensively as the present groups are laid out?

Mr. OLDHAM. You mean into systems as large as the Pennsylvania and the New York Central, or something of that sort?

Mr. GARBER. Yes.

Mr. OLDHAM. In the East, it has always been my idea, whether right or wrong, that they would eventually come to about four systems; in other words, that the New York Central and the Pennsylvania handle about 50 per cent of the business in the eastern territory, and the problem, it seems to me, was to get roads which would compete with them, and the question was whether out of the remaining roads you could group them in such way as to make two

additional systems of very similar character. I believed that you could and I still believe so, and that would be the ideal situation here in the East.

In the South you have very much the same situation. There is the Southern Railway, the Atlantic Coast Line, the Louisville & Nashville group. Those are the two principal systems of the South. Of course, there is the Seaboard and the Illinois Central gets into that territory, but in general you get that situation there.

West of the Mississippi River, we have a little more difficult problem. But, in general, it seemed to me that the kind of systems which we should aim to establish are the systems which you might say have the average characteristics of the territory in which they are located.

That would be, if you are going to get systems of similar characteristics, they must extend pretty much throughout that entire district. In that way they share in the business of the district and they would be subject to the advantages and disadvantages in operations which obtain throughout the district. In that way, you get very similar systems.

I think if you group the statistics of these roads you will find that it is quite remarkable how close the systems work out.

There is some testimony that was submitted by me during the Senate hearings, some tabulations showing the character of traffic handled by the roads making up the four eastern systems, and the results which they obtained.

The present groups, while arbitrary in some respects, have been formed to follow the natural flow of commerce, and the supposition was that the consolidations would naturally follow along lines which would meet this condition.

Mr. OLDHAM. Exactly. That would be my thought.

Mr. GARBER. What experience have you had in the practical operation of railroads?

Mr. OLDHAM. None.

Mr. GARBER. Have you ever investigated and given consideration to the question of the effect of consolidation upon the competion in service to the public?

Mr. OLDHAM. Of course, that question of competition—my conception of competition is different, I think, under the act, than some others have. It seems to me that the fundamental purpose of the act is to provide adequate service at the lowest cost consistent with such service. It seems to me that it would naturally follow that any competition which aimed to preserve roads, in independent operation, in which there was a waste, would not carry out the fundamental purpose of the act.

I believe, taking systems as a whole, that you have stronger competition in such a case as this: Let us assume for the moment that you had four roads in the eastern territory, each one of which or two or three of which reached every important center. I think that you would have more real competition than you would in having a couple of systems of that sort, and the remaining lines made up of smaller connecting systems attempting to operate in competition.

In other words, as to competition, it seems all there is to that is this: The reason for preserving competition is to assure more adequate and efficient service. If you combine all the railroads in a given

territory and say, "Here is so much income for all of you," and each one is a system with equal opportunity to compete for that business, if it falls down because of lack of economy of service, inefficiency, and because it does not furnish the kind of service which the public wants, it will not get its proportionate part of the whole, but the road that does that will be the most efficient, and the one that does the most for the public will get its proportionate part. There is only enough to go around.

That is the kind of competition that is preserved under the act, it seems to me, and is intended to be preserved under the act, and not necessarily physical lines which result in duplication of facilities. We went all through that in our public utilities, street railways, and gas companies operating in the same communities with a duplication of facilities, and we finally had to have a combination and monopoly of service of each one of those communities served by public utilities. This is just the same kind of situation except you have enough business to absorb all the facilities; and competition in the railroad field is possible without unnecessary duplication of facilities, as it is not in the public utility field, if it does not go too far you have not duplication of facilities. You give equal opportunities for each one of them and you ought to preserve such competition because it is a stimulus to economy and efficiency and also adequacy of service. That is the kind of competition, it seems to me, you would get under the act. Here is one railroad that runs from a given point to another point and that furnishes service to those two communities. Now, you have another railroad and have to keep interchanging traffic with three or four before it gets there. That is not as good competition as if there were two railroads reaching those same communities.

Mr. GARBER. What object would there be for competitive service in the heart of the grouped district, consolidated district? What object would there be to compete in service to the public where all the railroads were consolidated and under one corporation?

Mr. OLDHAM. There would not be.

Mr. GARBER. There would not be any competition.

Mr. OLDHAM. You are not consolidating them all under one.

Mr. GARBER. I mean in the heart of the consolidated district. Take it in the western sections of the United States, the western agricultural States, where there would be a consolidation of roads as extensive as the group that now exists, what object would there be for a competitive service bwtween those roads?

Mr. OLDHAM. Up to a certain point the public, at least, believes that it will stimulate those roads to provide better service, that competition would stimulate it because they are limited in their income based upon rates sufficient for the whole district, and they could only get their part by economy; thqt is the public's point of view. And this would practically be one difference between our public utilities and between our railroads. Our method of rate making is exactly the same, with reference to cost method of rate making, in one case monopoly, and in the other case able to preserve competition. If you carry your competition between those two points to such an extreme that you would have a waste of facilities, and consequently added cost of transportation, it would be inconsistent with the fundamental purposes of the act. It is for the commission

to determine whether roads may make extensions and if they do not think it is in the public interest, that it will duplicate or make unnecessary duplication of facilities, they would not grant them the power to make those extensions.

Mr. GARBER. Looking at it from the standpoint of farmers living on a branch line at the present time where competitive roads pass through a given point and the supply of cars is adequate and sufficient, and 20 or 30 miles away from competition on a branch line where the supply of cars at times has been quite insufficient and irregular and not dependable, I just wanted to get the effect that consolidation would have upon that service in car supply, for instance, to the agricultural producers.

Mr. OLDHAM. I think the answer of railroad men would be—of course, I am not capable of answering it from that point—that you would be very much better able to make a better distribution of cars with those systems than you would with a lot of little systems that are dependent after all upon the big systems to quite an extent for their cars. Then these conditions which you speak of, from what little I gather by reading reports, etc., I think they are conditions which existed three or four years ago and have not been very much in evidence in the last few years.

Mr. GARBER. Do you know the reason for that?

Mr. OLDHAM. I think the one reason is that the railroads have more equipment and organization.

Mr. GARBER. Administration is better—remarkably improved?

Mr. OLDHAM. I think so. They have worked those problems out and organized.

Mr. NEWTON. Let me suggest that it has been my experience that a great deal of this improvement in furnishing the cars has been due to these regional commissions that have been created by the carriers and shippers.

Mr. OLDHAM. Exactly.

Mr. NEWTON. They meet from time to time and a tremendous amount of good has grown out of this organization of these commissions.

Mr. OLDHAM. That is what I meant by organization.

Mr. GARBER. That has been caused by decentralization and distribution into regional districts of administrative power.

Mr. OLDHAM. Yes.

Mr. GARBER. Coming in close contact and touch with the needs of the several districts or communities.

Mr. OLDHAM. And I think with a reasonable number of systems that you will find it easier to administer to all parts of the country, the wants of all parts of the country, than you will with a very large number of systems of varied ability for service.

Mr. GARBER. From your investigation and study of the question of consolidation, I believe you stated that you have reached the conclusion that the Parker bill would facilitate consolidation?

Mr. OLDHAM. Yes.

Mr. GARBER. And bring about that result in a beneficial way to both the railroads and the country; is that right?

Mr. OLDHAM. Yes. In fact, I do not think you can make any progress without some supplemental legislation

Mr. GARBER. If the question resolves itself into a question of consolidation and no consolidation, you would, of course, support this bill, being in favor of consolidation?

Mr. OLDHAM. That is perfectly true. I have endeavored in my statement to show that this machinery which is now asked for is simply nothing new, but simply to facilitate what the country has already decided to do. In other words, you could not expect to draw a bill originally that would anticipate all difficulties that you are going to meet. Of course, they have to become prominent as you get further into the subject and see these various questions raised that have an absolute bearing on the matter. For instance, the commission is required to adopt a plan, and it took the position that pending the adoption of a plan they could not authorize any consolidations, although they very obviously carried out the purpose of the act in the interest of the public. Consequently, unless we do have some legislation, they will still be under a mandate to prepare that plan, and I can say to you that my belief is that you are going to put upon an overburdened commission a vast amount of absolutely unnecessary and useless work to prepare that plan. There are some things they could never agree upon, and some things that would not do, as they would prepare it anyway. These railroads will come together, I think, if we give them the opportunity and give the commission permission to authorize such as they believe are in the public interest, and by the public interest, I mean, carry out the law and the general purpose as that general purpose has been thoroughly discussed, with a pretty clear conception of about the kind of transportation systems which we should be headed for in order to make regulation the most successful.

Mr. GARBER. There is one other result of consolidation in which the public is deeply interested, and that is, under voluntary consolidation some of the weaker roads or branch lines might be left out and finally abandoned, but under this consolidation proposed by the Parker bill, under the regulation of the Interstate Commerce Commission, the probability is that the public generally would be better served in that respect in forcing the maintenance of these lines, would it not?

Mr. OLDHAM. I do not think the commission probably would force the railroads to maintain lines which really ought to be abandoned. I think the abandoned mileage will be relatively small. They were in the case of the Boston & Maine.

Mr. GARBER. This would minimize that mileage?

Mr. OLDHAM. I think it would minimize it. After all, this amount of railroad mileage which is so useless as to be abandoned, while it may be important, it is a relatively small part of the whole. It would not amount to more than 2 or 3 per cent; that is, for doing business, under any conceivable conditions; it would not amount to more than 1 or 2 per cent of the railroad business of the country.

Mr. GARBER. In reply to a question by Mr. Huddleston, I might have misunderstood you, but you do not mean to convey the impression that the valuation of the roads for rate-making purposes considered the market value of the stock, did you?

Mr. OLDHAM. No, sir; if I created that impression I would like to correct it.

Mr. GARBER. The value of the Milwaukee stock and other Northwestern stocks now is, perhaps, 50 to 75 per cent lower than they were some years ago, is it not?

Mr. OLDHAM. Yes; that theory certainly would be subject to very great difficulties in determining value because of market conditions.

Mr. GARBER. The Milwaukee stock was formerly 125 to 150.

Mr. OLDHAM. I think Milwaukee stock is now only 10 or 11, the common stock, and the preferred stock is not far from 20; I have not followed it definitely.

Mr. SHALLENBERGER. You are an investment banker?

Mr. OLDHAM. Yes.

Mr. SHALLENBERGER. Dealing in railroad stocks and securities?

Mr. OLDHAM. We do not deal in stocks; railroad, public utilities, municipal, and Government lands.

Mr. SHALLENBERGER. The principle that I gather behind this bill is that the public interest is to be considered every time these consolidations are to be brought about, and that is to be determined by the Interstate Commerce Commission. Is that not the principle of the bill?

Mr. OLDHAM. I would say so; yes.

Mr. SHALLENBERGER. Is it not fair to presume that the real motive behind every consolidation would be the desire of companies, under this bill providing for voluntary consolidation, and the desire of bankers and the controllers of the consolidated corporation, to make money? Would it not be their policy to go into this proposition for the purpose of profit?

Mr. OLDHAM. I have not taken it so.

Mr. SHALLENBERGER. I mean to say it is human nature in the matter the same as you and I, if we have properties which we think should be brought together—whether or not the average business corporation manager is going to consider the public benefit in that or the possibility to improve their own material welfare. Is not that the fair thing to hold in view in the matter?

Mr. OLDHAM. Of course, I think that is fair to say that, and also there are other things to be taken into consideration. I remember in the consolidation hearings that some of the roads were very much disturbed at the possibility of some of the propositions of the commission going through. For instance, take Mr. Holden, of the Burlington, as he said, the way he looked at it was that, perhaps, roads that he had been accustomed to interchange with at certain points, if those roads were to be extended through, he might not be able to exchange with them, and therefore he wanted to extend his own line through if there was to be that kind of status. The question was asked of one of the roads, "Do you want to remain independent?" "Yes; we want to remain independent." "Even if all the other roads of the district were brought into rather a few systems, do you want to remain independent yourself?" "No; we would want to be counted in on one of these systems." So there is something besides the thought that the whole motive is going to be for the bankers to make money; I do not believe that, but I believe a great many of them will go out on exchange of securities of one for the other on reasonable and fair terms. There will be all kinds of motives; that is perfectly true.

Mr. SHALLENBERGER. Has it been the policy since the passage of the 1920 act to have these consolidations initiated by the Interstate Commerce Commission, some considered, and some refused? Have

they come from the Interstate Commerce Commission or from the bankers themselves interested in railroads?

Mr. OLDHAM. The Interstate Commerce Commission have not initiated any?

Mr. SHALLENBERGER. So it is fair to presume that is the way it will proceed.

Mr. OLDHAM. Yes.

Mr. SHALLENBERGER. What is there in your experience and judgment and knowledge that leads you to think that there is going to be material benefit to the public in these consolidations?

Mr. OLDHAM. In the first place, we get back to the reasons which I have stated for putting them in. In the ideas of Congress and the witnesses who appeared before the various commissions, the difficulty was foreseen of providing a satisfactory system of public regulation We had been under private operation before the war. We had not been very successful. The reason for it was laid upon the railroads, and the railroads probably said, as they did, it was due to the lack of the right kind of regulation, and it was generally agreed that we ought to do something to change our system of regulation. After they got their system of regulation worked out they rather came to the conclusion that they had a good system but did not have the kind of system of transportation to which it could be successfully applied, and so they sought through consolidations to create a kind of system which could be regulated successfully by the other provisions of the act. That is my conception of it.

Mr. SHALLENBERGER. Is there not possibly something like this? That the grouping of railroads for rate making and the principles embodied in section 15–A, to attempt to make all the railroads in a certain group earn what we say is a fair return, was bound to result and has resulted in certain railroads earning a great deal larger earnings than was perhaps contemplated or would be deemed fair, and that by those mergers would be leveled up; but that thing under the present system, under the capitalization clause, has not worked out to be the practical solution of the problem, but that this consolidation is really required to make the principle embodied in section 15–A and which affects all the railroads in certain groups effective to make them work together, and that therefore this consolidation naturally follows?

Mr. OLDHAM. I think that was the original intention.

Mr. SHALLENBERGER. Do you think that behind the one principle is all the time the other?

Mr. OLDHAM. That is my belief.

Mr. SHALLENBERGER. But it is not really a declaration of policy in the act at present. It says here that they shall prepare a plan for consolidation as soon as practicable, etc., but it does not require that it shall be the policy to consolidate. In this one we do declare that this is the recognized and declared policy of Congress, to consolidate, and therefore we commit ourselves absolutely to the principle by direct declaration contained in it.

Mr. OLDHAM. I do not think you are committing yourselves to any more than is in the original act, because of the fact that you provided for a plan and described the kind of systems that should be created. They were systems which could operate in competition under uniform rates and get substantially the same results, the same

rate return on the value of their property. That, to my mind, was a declaration of policy, not as clearly stated as in this bill, and under that there has been more or less confusion as to what competition meant and preservation of existing routes and channels of trade and commerce. That has been taken advantage of in some cases where leases were brought up and they tried to oppose it on the basis that it did not preserve some existing route or channel, whether it ought to be preserved or not. That makes competition mean different from what I conceive it to be under the act, and so this declaration of policy to my mind simply clarifies the policy laid down under this act and describes the kind of systems.

Mr. SHALLENBERGER. Could it be stated in another way, that Congress attempted to lay down a principle of rate making in the act of 1920 which practical experience has proven is not a thing that can be applied, and in order to correct what was well known to be a stumbling block in the administrative feature put in the recapture clause for the Interstate Commerce Commission to work out, and we also put in here the distribution of consolidation for the Interstate Commerce Commission to effect, but they find as yet that they can not do it, so we have tried three or four things, and found it insoluble, and so would you think Congress should check up and say, we have made a mistake and let us start over again?

Mr. OLDHAM. I think if you carry out what I think was the intent of the original transportation act by supplying supplemental legislation to facilitate what you have tried to do, it would be helpful to the situation and all that is necessary for the present.

Mr. NEWTON. Reverting a moment to what Judge Garber interrogated you on, in reference to this question of car service, this service through these various regions, as I understand it, is directed from the American Railway Association here in Washington. That is, authority which before was left with the railroads themselves to work out, has been delegated to the American Railway Association, and they in turn have formed these commissions with the shipping public, and under centralization here have decentralized by this cooperative effort which has worked so that now, as I understand it, the carriers are moving far greater tonnage than they ever moved before and with practically no fault finding as to car service in any part of the country excepting down in Florida during a portion of this last year in the early winter which, of course, was due to a very abnormal condition there.

Now, in reference to this question of rate making, as I understand it, prior to the transportation act, the Interstate Commerce Commission in fixing a rate or in passing upon a rate which was fixed by the carriers, would allow the particular carrier to fix a rate which would give them a fair return upon the property devoted to transportation purposes. A change was made in the transportation act so that instead of each individual carrier being entitled to that return the commission fixed a general rate base which would give a return based upon the aggregate value of the property to the carriers as a whole or the carriers in a particular group. In substance, that statement is correct, is it not?

Mr. OLDHAM. I am not an authority and never studied the rate question, and it is a very complicated matter, but I would say that previous to the passage of the transportation act the Interstate

Commerce Commission passed upon reasonableness of individual rates without regard to the result on the sum total of rates. In other words, they felt no responsibility for the credit of the carrier. Now, under the transportation act they were required to make and adjust rates so that the rates as a whole would produce a certain amount of income. In that respect I think there is an essential difference.

Mr. NEWTON. There is a very substantial difference. What I was getting at, and your statement here has been very informing, is your judgment as to just wherein the public interest has been served better or for the worse by reason of the change that has been made.

Mr. OLDHAM. I think without any question that the commission in considering individual rates has got to consider them in relation to all the rates and not one rate by itself, and in that respect I think that they are on a better basis, and generally, I might say that we have been rather successful with the exception of one particular territory, which is the Northwest, where the question of decline in business is responsible for there rather than rates, according to my notion. I do not want to go into that.

Mr. NEWTON. There has also been a 10 per cent reduction in freight rates upon farm produce, which constitutes a very substantial portion of the revenues of northwestern roads.

Mr. OLDHAM. The rates, of course, have been less increased there than they have been in the east, but the relative volume of business has been affected very materially.

Mr. NEWTON. The chief effect, as you see it, from this change in the principle of rate making from the old rule to that which is embodied in the transportation act, has been one which has placed the carrier upon a much better and more substantial basis for the purpose of financing, etc.?

Mr. OLDHAM. I would say so; yes.

Mr. NEWTON. That has been the chief purpose that has been served by it?

Mr. OLDHAM. Yes.

Mr. NEWTON. Theoretically, of course, consolidation such as embodied in this bill would appear to be very good. But it is quite a problem to work out in practice. Now, we will assume that this law goes into effect and is in effect for a number of years, and there is going to be a number of roads throughout the country—they will be the weaker roads, of course—that are not going to be taken in. This question has been discussed heretofore this morning. Just what is going to happen to those roads? Are they going to be left out and and then because of the fact that it is going to be difficult for them to live, will they be forced into receivership and a reorganization to a more sound and stable basis?

Mr. OLDHAM. I think there is a provision in this bill, as I understand it, which allows these roads to intervene, when applications for consolidations are made to the commission and as one of the conditions to accomplish the greater thing that they want, those roads you are speaking about will simply, not every time, be absorbed by the big system; they would not cut much figure, and I think the strong roads would cooperate and take them in.

Mr. NEWTON. You think there would not be very many left?

Mr. OLDHAM. I do not think so; no, sir. I think the thing will work out and solve itself.

Mr. NEWTON. If there are those that are left, that would be the process?

Mr. OLDHAM. Yes. This bill provides to give them a chance to see how it works out; then the Interstate Commerce Commission can report a procedure.

Mr. NEWTON. Some of these roads have been organized on a very poor foundation and they have been struggling along one way or another ever since that time.

Mr OLDHAM. They may be strong roads as we speak of strong roads, which may struggle along if not properly capitalized; do not forget that.

Mr. NEWTON. That is true. Some roads that were organized were handicapped right from the start because of the nature of their capitalization. A percentage of those would have to be reorganized, but that would be very small because of the power that the commission has in the public interest to require them to take them in as the price of taking other systems.

Mr. OLDHAM. Yes.

Mr. NEWTON. I want to ask you this question in reference to valuation. There is the rule that has been in existence, and then there is the principle that has been advocated and was expressed by Mr. Justice Brandeis in two or three decisions of the Supreme Court—I believe it is going to be urged by Mr. Richberg before the commission some time during the latter part of this month in the valuation proceedings—that is based on the prudent investment theory rather than that of the value of the roads. What is your opinion in reference to those two theories?

Mr. OLDHAM. You are opening up a very big question and one that I am hardly competent to pass upon. I do not suppose it is at all possible to determine prudent investment as applied to railroads.

Mr. NEWTON. Why so?

Mr. OLDHAM. Perhaps I do not understand what the prudent investment theory is, but I presume it involves more or less determining the original cost, etc., or establishing some kind of theoretical way of getting at what might be the prudent investment. But the original cost, of course, is absolutely impossible to determine.

Mr. NEWTON. That would be true in a good many States. It would not be true, I think, in my own State.

Mr. OLDHAM. In newer sections, of course, that would be true.

Mr. NEWTON. Based upon the experience and difficulties in the East we very early adopted regulatory statutes which make it quite possible for us to arrive at the cost.

Mr. OLDHAM. Cost, but it may not be prudent cost.

Mr. NEWTON. I was wondering if the reason it is difficult is that there was not very much prudence used in those early days.

Mr. OLDHAM. No. One man with wisdom might build a great deal for a great deal less money than another. It is a very difficult question. I should like to hear their arguments and pass judgment after I heard from both sides on the subject. I have not studied it enough to be familiar with the contention.

Mr. NEWTON. The question of value is also quite problematical, especially in recent years where there has not been stability in values that there was in the period prior to the war when values kept about the same. But there has been such a rise in value that the question of value also has its difficulties.

Mr. OLDHAM. You say there has been a rise in value?

Mr. NEWTON. Since the war; replacement, etc.

Mr. OLDHAM. Replacement. I thought you were referring to market values. Yes; that is true.

Mr. NEWTON. That is all.

Mr. HOCH. If I understand the situation correctly, there is some confusion with reference to the groups for rate-making purposes and groups under the consolidation scheme. As I understand the provisions of the transportation act, the sections which provide for grouping for rate making have no relation particularly to the section which has to do with consolidation.

Mr. OLDHAM. I think that is perfectly true.

Mr. HOCH. Judge Garber referred, and I am asking this to see if I correctly understand this matter, to how there could be competition within the heart of the consolidated district. I do not understand that consolidated districts are contemplated, but rather, consolidated systems serving the same districts under competitive conditions.

Mr. OLDHAM. Exactly. Perhaps I did not understand fully what he meant. In other words, I think it is easier to say what I mean, at least, by referring to such competition as exists to-day as between the New York Central and the Pennsylvania. Of course, the New York Central might touch places which the Pennsylvania would not, but would you create another system which would compete with the New York Central at one point and the Pennsylvania, to compete at another point in some consolidation? In grouping these systems, it was brought out in this eastern district for consolidation that if you had four systems, every community of very substantial size would be served by two or three or all of these systems, which would mean substantial competition.

Mr. HOCH. In compliance with 15-A, the commission divided the country into districts, primarily three districts, eastern, southern, and western, and then they subdivided the western district for certain purposes.

Mr. OLDHAM. Yes.

Mr. HOCH. I am quite sure if the people west of the Mississippi River had any idea that consolidation meant consolidation of systems within the western district, they would not be favorable to it because it would remove largely the element of competition within the district.

Mr. OLDHAM. You mean if they were to make consolidation of all roads west?

Mr. HOCH. All the roads in the western rate-making district.

Mr. OLDHAM. Into one system?

Mr. HOCH. If they were consolidated into one system.

Mr. OLDHAM. No; I have not any such idea. I should regret it if anything I said led to that thought.

Mr. HOCH. I am trying to clear up this matter of rate districts under the consolidated systems provided for here.

Mr. OLDHAM. I think there is some coincidence in that the consolidations which have been proposed for the most part have been systems which would compete with each other in the same district. In other words, most of the plans being proposed were western lines which go to St. Louis and Chicago, and eastern lines terminating at

Chicago, to have in each one of these so-called rate districts such number of systems as seemed to be desirable to carry out the purposes of the act.

Mr. HOCH. I am not sure you made yourself clear in one answer to Mr. Huddleston. I understood you to say that there were many people who did not think that the grouping of railroads under any general plan was possible, but that as the work went on they looked upon it with more favor. Do you refer to rate-making groups or to the consolidation plan?

Mr. OLDHAM. I mean consolidation. I think there was a very great amount of skepticism as to whether the provisions of consolidation were not too idealistic, and we heard a great deal about trying to consolidate two or three thousand railroads, and all that, involving an absolute impossibility. A great many people had not analyzed the situation and did not realize that really a small number of systems did 85 to 95 per cent of the business.

Mr. HOCH. This bill abandons the idea of a general plan of consolidation?

Mr. OLDHAM. Yes.

Mr. HOCH. And to that extent the people who predicted that was not possible were correct?

Mr. OLDHAM. I think they would be correct in determining that any one particular plan was the plan to adopt in preference to something else. For instance, there are some groupings which I made. I put, we will say, the Wabash with the Nickel Plate. When the Nickel Plate bought the Clover Leaf the purpose that the Wabash was to serve was lost, so I simply shifted it over into some other system. There are plenty of alternative systems. I do not have in mind that the commission or anybody else could determine one individual plan which would take every railroad in the United States and say that would be the best, the only plan, and if that was the basis of the prediction, it would be true, but I intended to be broader in my observation than that and to say that the grouping of substantially all the roads into a reasonable number of systems was a thing that was impossible of accomplishment.

Mr. HOCH. Do you think it is wise to abandon entirely the idea of a general plan before any consolidations are permitted?

Mr. OLDHAM. Only to this extent that I think so long as you have a clear statement of policy in this act, and you have set up before the commission the kind of transportation system which is to be made up, that you can very well postpone for the time, if you prefer, almost indefinitely, or as this bill provides, to see what can be done voluntarily, and then the commission can come forward and advise Congress that they think it would be wise to have a definite plan. It will only be in my judgment a clean-up proposition.

Mr. HOCH. This bill abandons the plan entirely, for the moment.

Mr. OLDHAM. You have either got to abandon or postpone for a considerable time. I do not care particularly one way or the other. I think that thought has been expressed.

Mr. GARBER. At the present time the Rock Island and the Frisco roads are endeavoring to consolidate. They have already transposed officers within their separate corporatoins, to familiarize themselves with the management and operations of the roads. The Frisco and the Rock Island serve the southwest territory. If this consolidation

is made and then under the bill the Santa Fe is included, it will be a consolidated district for the Southwest, especially for the State of Oklahoma and parts of Kansas.

Mr. HOCH. Personally, I do not apprehend that sort of consolidation will be permitted by the commission.

Mr. GARBER. That was the kind of consolidation I had in mind.

Mr. HOCH. I do not think they could permit consolidation which would go to the extent you state.

Mr. GARBER. What would prevent such a consolidation?

Mr. HOCH. The statement of this bill is that they shall only be consolidated in a way that will preserve competition, and if competition is removed, I understand the commission would have no power; it would be contrary to the policy if they authorized any such consolidation. Do you care to express as an opinion as to how many systems the country might well sustain?

Mr. OLDHAM. The groupings which I have made have been in the neighborhood of 14 or 15, which I have divided, and that would be a question of what would you call systems. My groupings included about four systems in the East, two or three in the South, and about six in the West—west of the Mississippi River. They might not go as far as that. But if you put a limit from 15 to 20 you would have about as far as you could go and create systems of the type we have spoken of. It has always been my belief we must expect to have systems with these average characteristics, but it is not quite possible to have a diversity of traffic under those operating conditions, to reach the district in which located, unless the system extends through that district.

Mr. HOCH. As a concrete application, in connection with Judge Garber's observation, do you recall what your plan provided in the western district—what roads would be consolidated?

Mr. OLDHAM. I have had probably 15 or 20 different groupings, various combinations. You put one road in for a certain purpose; another road serves the purpose, but as soon as you change one you have to shift the others.

Mr. HOCH. Suggest one of your plans so that we will get an idea of what you have in mind for the western district.

Mr. OLDHAM. In general, I would say that this involved at that time a combination which would put a road like the Rock Island with the Southern Pacific, and which would have to be changed now because of some things that have developed, and the Santa Fe completing a little more with the Southern Pacific, by, perhaps, taking in the Texas & Pacific and some of those lines which have now been taken over by the Missouri Pacific and others.

I think in the original plan which I suggested—I suggested the Great Northern and the North Western, leaving the Burlington with the Northern Pacific, and others thought or suggested the Burlington might be better left with the Great Northern. That in general is the type, that is, railroad systems which would reach the Pacific coast extending north and south, and through the center, reaching St. Louis and Chicago, as their eastern termini, there connecting with the four eastern systems which we would have to have because of the character of those systems is established; in fact, we have the New York Central and Pennsylvania.

Mr. HOCH. That would leave how many systems going west?

Mr. OLDHAM. From the Mississippi River; at one time I think it was six. I have had quite a number of groupings. It is more or less gathering information as the consolidation hearings proceeded and learning more about traffic. I will make it clear now that the purpose of any groupings which I had made was really to demonstrate the feasibility of creating systems which could be expected under average rates to get substantially similar results. The thing has to be studied further, exchange of traffic on different systems, what has already been done, and to be sure you are keeping what is the most natural course of the channels of trade, etc.

The CHAIRMAN. Would you mind putting your statement in the record?

Mr. OLDHAM. No; I would be very glad to. I have published a plan, the investment bankers have published a plan, in November, 1921, that contained the original suggestions, with groupings and data, and I would be very glad to put it in the record.

The CHAIRMAN. You may put it in the record.

Mr. OLDHAM. It would give you an idea; I do not pretend anything for it beyond the general feasibility.

Mr. HOCH. That is one reason I was asking the question, not to get you to tie yourself to any particular suggestion, but to get your idea of what you mean by consolidations when you speak of consolidations.

Mr. OLDHAM. Exactly. I discuss the whole subject. It is quite an elaborate statement, and also, that was all introduced by Senator Cummins into the Senate hearings, also my testimony before the Interstate Commerce Commission on consolidations. I introduced that also, supplementing the plan, as it might be helpful.

The CHAIRMAN. I think it would be very illuminating. I wish you would do it.

Mr. OLDHAM. Yes.

Mr. BURTNESS. Have you thought over what effect these consolidations would have on the basis of rate making; that is, upon the basis upon which the rates should be made upon consolidation? Mr. Newton asked some questions that rather touched on it, but I do not think they went quite through with it.

Mr. OLDHAM. I do not know that I quite get your question.

Mr. BURTNESS. Let me explain. Now, it is the duty of the Interstate Commerce Commission to fix rates that in a general way will bring a fair return, what is regarded as a fair return, upon the physical value of the property of the carriers in certain definite groupings. Some of those carriers under that basis, of necessity, will get a rather large return, as we think of returns of public service corporations. Others will get what is a small return. Some, apparently, are not getting any returns at all. When it comes to consolidating some of those roads that are getting large returns with those receiving small returns, I take it for granted that in the merged corporation the weak road can not come in and say, "Here, it cost so much to build this plant and the same to replace the plant, and we want that value placed on our property in the consolidation." They will have to go into the consolidated company, I take it, upon the real value, and naturally the returns it has been making over a term of years is a very important factor in determining that value. So it seems to me it is also quite possible that in this merged corporation, the

consolidated company, those railroads that are so located that upon the rates established, deemed fair to the country in general, they have always received a large return, larger than what is deemed to be a fair return for public service corporation. I take it that it is quite possible that in the proposed consolidation that sort of railroad in combining would say it is entitled to a valuation that is greater than its replacement value even; but assuming even that it did not, might it not be true that the total value, the book value, of the consolidated company would be a considerably different figure from the figure that is accepted as representing the value of the plant as such, the tentative valuation of the Interstate Commerce Commission? If that is the case, then what effect, if any, would it have upon the basis that should be accepted by the commission as the basis upon which to make rates?

Mr. OLDHAM. I think the commission, regardless of the consolidation, must determine before they get through what is the value for rate-making purposes, and then the public should pay. I see no reason why the public should not pay in rates an amount which will provide a fair return on all property which is used in the service of transportation. How that is divided up, it seems to me, the public is not really concerned with; they are paying no more than they are required to pay, which is a fair return on the property used, and the method of dividing it among the railroads involved brings in questions of relative values.

Mr. BURTNESS. Let us see if I get you correctly. Do you think that if a company, for instance, that could not earn more than 1 or 2 per cent under the present situation upon the value of the property, and when I use value, I mean tentative physical valuation of the property as fixed by the Interstate Commerce Commission—if in the consolidation the larger company says, "No; we can not consolidate with you; your property can never yield 5¾ or 6 per cent return," and by reason of that argument, that company, if you try to fix its value upon the returns that it is going to have, eventually may have to come in on a valuation that is not over 50 per cent of what the replacement value of the property would be, or its tentative valuation—then do you feel that when that consolidation is effected, that the public should still be expected to pay a fair return upon the replacement value, or simply a fair return upon what that property is valued at in the consolidation?

Mr. OLDHAM. I should think they would be obliged to pay a return upon such value as the commission finds, and the value of the combined properties be the basis of rate-making.

Mr. BURTNESS. Then, do I understand you to say it would not make any difference in so far as fixing the rates is concerned, as to what that rather weak line was put in at in the merged or consolidated company?

Mr. OLDHAM. I would say that the principle should be followed as set forth or recognized in the transportation act, that the public should pay the cost of transportation, the full cost of transportation, and a return upon such value as shall be determined as the value of the property for rate-making purposes. The question of who owns the property, it does not seem to me is involved in the question of rates.

Mr. BURTNESS. The point I was trying to get at is whether in effecting these consolidations there would or would not arise a different basis of value?

Mr. OLDHAM. I think there would be.

Mr. BURTNESS. Which would be taken into consideration in determining rates, or whether the basis of value for rate making should remain the same as set out in the transportation act?

Mr. OLDHAM. I think they are two separate questions. I would expect that the two roads would get together on the basis of their expected earning capacity, so far as it could be foretold, and the judgment of that has to be determined on the basis of what it has done in the past and various considerations that may come in. If I were negotiating for a road and I saw that that road with the existing conditions could never earn any more than it earned the past four or five years, I would consider that in a certain sense the basis for its value, based on those earnings.

Mr. BURTNESS. Would you not capitalize those earnings, in other words? You would probably not pay a great deal of attention to just how much the right of way cost, ties, rails, and equipment?

Mr. OLDHAM. No, sir.

Mr. BURTNESS. Would you capitalize their earning power and take the road in at that figure?

Mr. OLDHAM. I would say, if I were the rich road, and had to turn something over, to cooperate for the sake of getting you to come in, we can compromise and divide it up and give you a little consideration, if they had a property value. Those are all matters of negotiation. I do not know whether I have made myself clear on that other point or not.

Mr. BURTNESS. You have clearly discussed one of the points I have in mind, but you have not gone to the other thing, which I have in mind, and which I am probably not making clear, and that is after the consolidation is effected on that sort of basis, which is entirely different from the rate-making policy laid down in the transportation act, then how would you fix the rates?

Mr. OLDHAM. Then your question is, are you going to revise values?

Mr. BURTNESS. Are you then going to revise values for rate-making purposes along the same line these values have been put into the merged and consolidated company or not, or are you going to accept, for rate-making purposes, an entirely different and arbitrary valuation to which those companies when they consolidated, paid no attention?

Mr. OLDHAM. I would say that the Interstate Commerce Commission would determine what was a fair value, taking everything into consideration, whether they could earn or could not earn that; that is, value upon which the public should pay. I do not see any reason for changing that value. They are unforutnate if they can not earn it, nevertheless, they have invested their money and are entitled to a return on it, and the public is not paying any more than it should pay when it pays the cost of transportation.

Mr. BURTNESS. Why would it not be fair when one coporation is put in at $1,000,000,000, if it is put in at a fair valuation, its earnings capitalized, another corporation at $1,000,000,000, and a third carrier at $2,000,000,000, and they agreed upon that, and the total value of the property arbitrarily in that hypothetical case, the total valuation agreed upon for the three roads to be consolidated would amount to

$4,000,000,000. That $4,000,000,000 might be more or it might be considerably less than the tentative valuation fixed by the Interstate Commerce Commission upon the physical property as such. If that consolidation is effected, if they are making a new slate there, etc., is there any argument in favor of the proposition that when it comes to rate making the valuation that was determined at that time should be the basis for rate making rather than what some think is replacement value?

Mr. OLDHAM. When the Interstate Commerce Commission determines value for rate-making purposes, they have determined the consideration that the owner of the property is entitled to and that the public should pay on. You could change the ownership, and that is probably one of the inducements to get them together that there was an excess value and excess earnings, which would induce these properties to come together rather than turn the excess over for purposes of recapture.

Mr. BURTNESS. It might amount to the same thing in the long run, that one company puts in its property at much less than its present valuation, because it does not earn much, and that deficit there would be offset by the excess allowed a strong company in the new company. It might amount to the same thing, and yet it seems to me we will run up against this sort of argument, that if the company is merged with the consolidated company, and its physical valuation now is $2,000,000, yet its return is so low that the merged company will not accept it at anything more than $1,000,000, that the public then should not be expected to pay the return upon more than $1,000,000, because that is all that the property has cost this merged company.

Mr. OLDHAM. Yes; but the property was built, and the Interstate Commerce Commission has said you are entitled to earnings upon the $2,000,000.

Mr. BURTNESS. Congress has said that to the Interstate Commerce Commission and has instructed it to set those rates accordingly, but that does not mean to imply that we can never have a change; Congress can change the policy any time; that is what we are discussing here. That is why I asked the question whether in your opinion this question of consolidation if effected along the lines proposed and hoped for by this bill, whether it would or would not eventually have any effect upon the policy that Congress should adopt with reference to rate making? That is as to return, as to the basis of value that would be used for rate-making purposes.

Mr. OLDHAM. I have not thought enough on that subject to reach a definite conclusion, but I really feel that in that case it would not be a factor of supreme importance, and that if we are going to wait to thresh out all those other features of the act rather than to get to the direct purpose and get into the other features of the transportation act that ought to be revised, we will not get far on our legislation, and I do not think, when you get down to it, that that question will be a very important question because of the fact that such roads as you might anticipate could earn that very small return would be roads that would handle a very small part of the business of the country. That is made with a considerable knowledge of the Federal valuation and comparative values of these properties and earnings related to values, and I do not think it is a problem that is very material.

Mr. BURTNESS. You would expect the Milwaukee road to be consolidated with some system, would you not?

Mr. OLDHAM. Yes.

Mr. BURTNESS. Have you any idea what the tentative valuation of the Milwaukee road is?

Mr. OLDHAM. I would not want to give the tentative valuation. I have an idea but I would not want to quote the figures.

Mr. BURTNESS. From your familiarity with the business, assuming that the Milwaukee road was going to be put into a merged company with a strong road, have you any idea that the strong road would be willing to accept the Milwaukee road at anywhere near the so-called tentative valuation upon it?

Mr. OLDHAM. I would not want to express an opinion on that. I would suppose earning capacity would be the most concrete factor, relative earning capacity as the basis for getting together. I would not want to express an opinion at the moment on it.

Mr. BURTNESS. The answer to me is very obvious. For consolidation business men would not accept a road like the Milwaukee at its full replacement value; and if not, should the same basis for returns apply to it as applied in the past?

Mr. OLDHAM. Of course, if the roads in the Northwest were earning and their business had grown in the same proportion since the war as they have in other parts of the country, the problem there would be very much less than at the present time.

Mr. BURTNESS. Certainly.

Mr. OLDHAM. Consequently, earning capacity to-day, return on the investment, may not be what we might expect under normal conditions or as business begins to get back.

Mr. BURTNESS. As compared with other roads, there are some roads that are doing well in the Northwest, comparatively well?

Mr. OLDHAM. There are no roads in the Northwest that are earning much return on the value of the property, as far as I know.

Mr. BURTNESS. But very well as compared with the Milwaukee.

Mr. OLDHAM. Better than the Milwaukee, not materially, but somewhat better. Then also you should compare earnings to-day. I do not know whether it is fair or not. The Milwaukee is in the hands of a receiver and a road in the hands of a receiver does not show quite the earning capacity of one without the overcharge maintenance, etc., perhaps.

You have got to go over a long period.

Mr. BURTNESS. At any rate, if I understand you correctly, you do not see at this time that consolidation of roads would immediately, at any rate, affect the rate policies?

Mr. OLDHAM. No; I would not think so.

Mr. LEA. In reference to the question of return, does not a fair return in substance mean a return on the investment for the owners of the railroad?

Mr. OLDHAM. Yes.

Mr. LEA. And if we had a case where admittedly their investment is $1,000,000, why should we have a system that would give a return on $2,000,000 for rate-making purposes?

Mr. OLDHAM. When you use the term investment, I want to be sure that we mean the same thing. We use the term, fair return on investment. Your question is what would determine the basis

of investment, the amount of money put into it or some other basis?

Mr. LEA. I do not mean to question what the existing law is, because I have no doubt you gave the right answer about it, but the real question is whether or not we have a just standard at present with the Interstate Commerce Commission for rate-making purposes. The question in my mind is what justification is there for permitting a rate-making purpose on a basis of $2,000,000 when it only costs the investor $1,000,000?

Mr. OLDHAM. Of course, I do not know that that is so. We have different ideas, as I understand it.

Mr. HUDDLESTON. Is it not a constitutional test? In other words, the return must not be confiscatory; that is, based on property valuation.

Mr. LEA. That would be based on market valuation.

Mr. HUDDLESTON. That would be valuation of property devoted to transportation purposes and not what it cost the parties.

Mr. LEA. That would be the constitutional test, I understand.

Mr. HUDDLESTON. Yes.

Mr. LEA. The idea is to give a return on the investment of the company in order that we might have efficient transportation and induce men to invest. Do we not sufficiently meet that and even the constitutional test when we allow a fair return on what is admittedly the investment?

Mr. OLDHAM. I think if we ever get to any value, to a large part based on return, it has got to be done as the basis for agreement and compromise between Congress, the Government, and the railroads. I do not believe there is any other. One man may go on reproduction costs with or without depreciation. Another man may like to get at it from the standpoint of the original cost, and somebody may want to use the values as of to-day, and somebody else may want to use the values and determine your reproduction cost of 1914. I think it has to be worked out as a good many of the settlements with the Railroad Administration were settled in the period of Federal control. They had to compromise, and they could not do it any other way.

Mr. LEA. The question is more or less theoretical.

Mr. OLDHAM. It is a difficult question.

Mr. LEA. What would be the effect on the aggregate capitalization of the roads by consolidation? Would it increase the aggregate capitalization, or would it be substantially as the aggregate valuation would be to-day?

Mr. OLDHAM. I think it would have a tendency to decrease rather than increase for the reason that you would have to exchange the securities of the strong roads selling at par or a premium for securities of what we will call the weak roads, where their stock might sell at 15 or 25 below par. It would have a tendency to reduce the face value of the capitalization. That was the case with the Nickel Plate consolidation. The Erie capitalization was reduced. I think the total capitalization was reduced over a hundred million dollars face value.

Mr. LEA. Figured on a par basis?

Mr. OLDHAM. I assume that is what you meant.

Mr. LEA. Then as to the question of the actual value of securities, what would be the probable effect?

Mr. OLDHAM. The probable effect of that would be based on earnings; combined earnings of these properties would determine the value.

Mr. LEA. What has been the effect generally of consolidation on corporations, ordinary private corporations? I have an impression from general knowledge that the general tendency is to increase the capitalization by consolidation. Is that true?

Mr. OLDHAM. I think very likely that may be true, but it could not be quite true as to railroads, because they are under regulation; other corporations are not under regulation; they capitalize at whatever they might want to.

Mr. LEA. One object of consolidation would be for better financing.

Mr. OLDHAM. Yes; if a road attempted to capitalize on a basis, which would not give it the proper kind of financial structure, it would not be granted permission by the commission to do it; I should hope it would not, because, frankly, one of the things I hoped for by working out this consolidation was to bring about recapitalization of a number or many of the weaker roads, which would leave us finally with nothing but roads of good financial structure and good credit. You may have roads that are earning a fair return and more than a fair return on the value of their properties, and yet they would not be roads of good credit unless properly organized financially. If a road was overcapitalized, had too many bonds in proportion to the stock, you would not have solved your problem.

Mr. LEA. Can you state generally how the return from railroad securities compares with the return that they receive on the basis of the valuation?

Mr. OLDHAM. No; I could not at the moment.

Mr. LEA. In reference to the preservation of competition in service, competition costs money, does it not? Would it not reduce expenses to railroads if we permitted consolidation between main points?

Mr. OLDHAM. It might or might not. I would not want to say competition costs money; sometimes it does cost money, but two of our objects in preserving competition at this time are these: First, provide satisfactory service, service that is adequate and satisfactory to the public, and also to stimulate them to make their best efforts to get costs down, because there is just enough income to go around, and if you are not efficient and make the best of your opportunity, somebody else will get your proportionate part, when there is only 100 per cent to go around.

Mr. LEA. We depend on the commission for protection of the shippers against unjust rates?

Mr. OLDHAM. Yes.

Mr. LEA. Why could not we depend on the commission for requiring service that was satisfactory to the public?

Mr. OLDHAM. You are depending a great deal on the commission for a great many things that they are doing freely and are depending on them for a great many things you can not expect them to accomplish. That commission is composed of 11 men, and if anybody wants to be familiar with the work of the commission, before putting any more on them, look in and see what the commission is doing.

Mr. LEA. I was trying to get your judgment; I was not advocating anything.

Mr. OLDHAM. I understand that.

Mr. LEA. It is your judgment that this competition in service between points is necessary, or, at least, advisable?

Mr. OLDHAM. I think it is desirable, and preferable to making the regional consolidations.

Mr. LEA. That is all.

Mr. HOCH. I am not very good at figures, but I will submit a simple proposition here along the line of Mr. Burtness's suggestion. Let us assume two roads with a tentative valuation for rate-making purposes of $10,000,000 each.

Mr. OLDHAM. Yes.

Mr. HOCH. I will make this as simple as possible. Both are valued by the commission at the same figure for rate-making purposes. That is a combined valuation of $20,000,000. We will assume 6 per cent is a fair return, and the commission is obligated to fix rates that will earn upon $20,000,000, that 6 per cent, or $1,200,000 a year. One of the roads earns 8 per cent and the other 4 per cent. Therefore, one of them earns $800,000, and the other $400,000.

Mr. OLDHAM. Yes.

Mr. HOCH. Under the present law the road which earns 8 per cent is obligated to turn into this fund one-half of the excess above 6, or one-half of $200,000, namely, $100,000.

Mr. OLDHAM. Exactly.

Mr. HOCH. And it retains $700,000, and $100,000 goes for the purpose of being loaned to the road that earned only $400,000. Under the present law it gets net under that situation, $700,000. Let us assume we consolidate those two roads, and assuming that we keep the rates at the present level upon the consolidated basis of $20,000,000, they would still earn upon the same rate level, $1,200,000. Now, then, the prosperous road, we will assume, has invested the tentative valuation figure in that road, taking it over at the valuation the commission had fixed for rate-making purposes. Let us assume that for purposes of illustration. It has got to earn upon the $10,000,000 which it had used for the purchase of this weak road. That is $600,000, at 6 per cent, so the strong road has left after consolidation for its own use, only $600,000, as against $700,000, which it would have had under the present law. If my reasoning is correct, under that sort of situation, the strong road would have no incentive to consolidate with the weak road; rather, it would have an incentive not to consolidate, unless it could purchase the weak road at much less than $10,000,000. Is that true?

Mr. OLDHAM. I should say so.

Mr. HOCH. The question that Mr. Burtness raises is whether under the consolidated system we would retain $10,000,000 as the basis for rate-making purposes on the value of the property of the weak line acquired by the strong line. It seems to me one of two things is true, either the strong road would have to be permitted to buy the weak road at less than the tentative valuation of $10,000,000, or else we would have to raise after consolidation the rate level, in order to get to the strong road what it was getting before the consolidation, because obviously we could not force upon the strong road a consolidation which would depreciate the value of the property which it already had. Is that true?

Mr. OLDHAM. That is true. Now, you probably would find that it was not taking over and paying for that property its tentative valuation. You are buying it upon its market value which is its earning capacity.

Mr. HOCH. We will assume then that the road actually pays out only $5,000,000 or $6,000,000.

Mr. OLDHAM. In other words, there is a basis for compromise. The result of taking the road over is for the interest of the public. It might be that they would be able to make some operating economies. Assuming that they are able to make operating economies by taking that over, as all roads are doing, you would get down to the lower rate level before you get through.

Mr. HOCH. If a strong road takes over a weak road and pays for its property only $6,000,000, upon what theory should we fix the rate level which would permit a return upon more than the $16,000,000, on more than the $10,000,000 valuation of the strong road and the $6,000,000 which the road actually paid for the weak line?

Mr. OLDHAM. Supposing I have this property valued at $10,000,000, as established by the commission, and it will not earn enough to warrant it, and I sell it at $6,000,000; is that any reason why the commission should drop the valuation for rate-making purposes?

Mr. HOCH. I will put the question the other way. Is there any reason why a road that only paid $6,000,000 should earn more than 6 per cent upon the $6,000,000?

Mr. OLDHAM. I do not think it may be done with the change in ownership. It may be able to earn more some time in the future. Look at the Southwest roads, the Seaboard, and others going into Florida. We have that value provided the business grows up, and there is no reason why because over a certain period they have not been able to earn—you and I can not foresee development that will produce earnings—that because of that we should reduce the valuation of that property for rate-making purposes. That would be my answer.

Mr. HUDDLESTON. One of the best reasons is that the Constitution requires that we shall consider the value of property devoted to public use and allow a fair return, otherwise it would be confiscation under the fifth amendment.

Mr. HOCH. My question was, If they paid only $6,000,000, how could you hold that the value would be more than $6,000,000?

Mr. HUDDLESTON. Because the value of the property is determined not by what they paid for it, but by what it is worth.

Mr. HOCH. What it is worth is to be determined by what it earns.

Mr. OLDHAM. That may be for exchange.

Mr. HOCH. What it can earn under just and reasonable rates.

Mr. OLDHAM. We can not tell what it may earn in the future.

Mr. BURTNESS. If the suggestion made by Mr. Huddleston were carried out, that would seem to mean that we would have two or more sets of rates fixed by the commission at the request of Congress—a set of rates which would yield a return upon all the properties invested in the transportation business—and that is not the policy of prudent investments nor that adopted by the commission.

Mr. HUDDLESTON. I am identified with this extremely conservative faction that insists on valuation based uppn prudent investment. I am on your side of the question. There is some room for differences of opinion about that, as far as the Constitution is concerned,

but not the opinion that we have got to pay for the value of property as appraised. Whether that means at the time it was dedicated to the public or at the present time, of course, there is room for a difference of opinion on that. Our insistence is the time property is dedicated to the public, and any unearned increment that accrues to it thereafter belongs to the public and not to the people who dedicated it.

Mr. BURTNESS. Supplementing what Mr. Hoch has set out in his hypothetical case as a practical proposition, it might mean that the result of the consolidation of those two companies, one earning 8 per cent and one 4 per cent, for the purpose of consolidation it is quite likely that the strong company would be placed into the merger, say, at about $13,000,000, and the weaker one at $7,000,000, making a total of $20,000,000, which would be identical with the physical valuation of the property as such. In that case it would not make any difference what basis was really adopted, but if, on the other hand, the arrangement was such that the weaker company was put in at $6,000,000, and the strong company at only $10,000,000, or even $12,000,000, or $2,000,000 more than the physical valuation, then the total cost to the merged company would be only $18,000,000, and Mr. Hoch and I do not seem to see how the merged company, a public service corporation, could expect more than a fair return on the $18,000,000.

Mr. OLDHAM. Such value as the Interstate Commerce Commission puts upon it for rate-making purposes. We are not discussing, I do not know, and I am not competent to pass judgment upon what that basis should be.

Mr. BURTNESS. Congress instructs the Interstate Commerce Commission as to the policy it is to follow in fixing the basis.

The CHAIRMAN. Following out Mr. Hoch's idea that if you have htose two roads, both valued at $10,000,000, and one sold for $6,000,000, if you follow out Mr. Hoch's value, taking the value of one at $6,000,000, suppose the other one is valued at $14,000,000? Is there then any reason why the commission should not say that the one they valued at $10,000,000 is worth $14,000,000? They say that the one valued at $6,000,000 is worth $10,000,000. Why do they not say the selling price is going to fix the valuation? If it fixes value if it goes up, why does it not fix it if it goes down?

Mr. HOCH. Exactly so.

The CHAIRMAN. Why not?

Mr. HOCH. As long as the commission has already said this road is valued at $10,000,000, the mere fact that they take over another should not change it.

The CHAIRMAN. Then why should it change the other one? If it is going to change one it must change the other. It is a poor rule that does not work both ways.

Mr. BURTNESS. My question was simply what the basis should be.

The CHAIRMAN. That thought came to me. I do not advocate that. Do not misunderstand me.

Mr. HOCH. If the strong road can buy this property for $6,000,000, you think it should be entitled to a profit of $4,000,000, to add to the value of its own road? I do not see that.

Mr. OLDHAM. If somebody overpays for a road valued at $10,000,000, overpays in one case and underpays in the other, what

are you going to do? Who is going to determine whether it is overpayment or underpayment?

Mr. HOCH. The rule must apply both ways. I am not assuming that many roads will pay considerably more than the value.

The CHAIRMAN. No. We have been getting into a hypothetical case.

The committee stands adjourned until to-morrow morning at 10 o'clock, at which time Mr. Cain will appear, followed by Commissioner Hall at 11 o'clock.

(Thereupon, at 12.20 o'clock p. m., the committee adjourned to meet again at 10 o'clock a. m., Thursday, June 9, 1926.)

RAILROAD CONSOLIDATIONS

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Thursday, June 10, 1926.

The committee met at 10 o'clock a. m., Hon. James S. Parker (chairman) presiding.

STATEMENT OF MR. BEN B. CAIN—Continued

The CHAIRMAN. You have finished your direct statement?

Mr. CAIN. Yes, sir.

The CHAIRMAN. Is there anything in addition that you wish to say?

Mr. CAIN. If I am not imposing on the committee, I should like to call attention to one phase of the bill now under consideration to which I alluded in my main statement, but perhaps I did not make myself entirely clear.

On page 8 of the pending bill, paragraph 2, of section 7, the bill provides that the carriers and the commission shall give due consideration to the inclusion in the plan of short and weak carriers in the territory involved and in order that the policy declared in section 202 of this title may be carried out, the commission is directed to make and have available for its use, a study of the short and weak carriers.

That will be most helpful, Mr. Chairman, to the short-line railroads; but inasmuch as this bill proposes to leave the situation for voluntary action of the carriers for a period of years, as I tried to make plain to the committee in a previous hearing, I think the commission ought to be told in plain terms to exercise its powers to group these carriers into provisional or constructive systems for the administration of their powers under the interstate commerce act.

I, for my own use, prepared an addition or an amendment to this paragraph which I should like to file with the committee later. I haven't it with me. I just got in town and picked up my papers, and I notice that I haven't it here. I should not, anyway, read it to the committee unless they wanted it, but with your permission I will add that proposed amendment to this provision.

I think that I called attention to another feature of the bill, and that was the incorporation of a recapture provision, using the principles of the Senate bill, which I also have revised, so as to utilize those principles in connection with a provisional system.

As I said in the previous hearing, I do not care anything about a plan, although I do not see how the commission can intelligently discharge its duty without a plan at the back of its head, or a plan

somewhere, because otherwise they may gerrymander a system all over the country.

I have heard it said—I do not know that there is any truth in it—but I have heard it said that the ambition of Mr. Loree is to build a railroad from New York to St. Louis and Chicago, and connect up with a system that he will take down through Texas and the Southwest.

I think there must be some regard for the protection of the public against systems of unequal strength. I think that they should be formed so that they can be competitive, in the sense of serving the public, and they should also be as nearly equal in strength from their location, their coal supply, various things that enter into the successful operation of the system.

Therefore, I think that if the commission is going to protect the public, as has been said, and as was said in the editorials which I read you, you can always find some benefit to the public in consolidation or in construction of carriers or anything of that kind; but, in my judgment, the commission must not overlook the broad, public interest in its desire to accommodate the local or more restricted public interest.

The general interest, as well as the special interest, must be considered; and I do not see how, without some sort of a plan—not a map, but rules which would apply—I do not see how the commission can well get along.

In the discussion of the Nickel Plate case I sought to show to the commission that under its powers conferred by section 5 a plan did not necessarily comprehend a map or an allocation of all the railroads of the United States. I am not going to take your time in reading my suggested plan, but I will say that I took the tentative plan of the commission as the basis and suggested rules which, if the major systems or major carriers which the commission used to separate the railroads of the United States in 19 groups were used as group heads or system heads, with rules that I suggested, you could group around those system heads or permit them to group the carriers of the United States voluntarily, if you please, and thereby have a system of railroads naturally formed.

I suggested as group heads, merely taking the tentative plan of the commission, for New England, the New York, New Haven & Hartford; for the eastern territory, the New York Central. That would be a system head around which the other roads could be joined—the Pennsylvania, Baltimore & Ohio, and Nickel Plate.

Right here I want to say that I have information that I know is reliable, to the effect that the Nickel Plate, New York Central, Pennsylvania, Baltimore & Ohio, did consider amongst themselves the grouping of all the carriers in the eastern territory. The Pennsylvania did not join in with the other three major carriers in submitting a consolidation plan, but the reason that it did not do so is that it presented its own views separate and apart from the other three, to the commission informally.

I know that it was the purpose of those four major carriers, who were suggesting a consolidation system for the eastern territory, that my organization was to participate, if the Nickel Plate proposition was authorized, in allocating all of the railroads that ought to be allocated in the eastern territory.

If that can be done in the eastern territory, it can be done all over the United States.

I say, further: The Southern—Atlantic Coast Line, Illinois Central, Seaboard Air Line, and Southern.

I can take those four major carriers and let them under certain rules which can be adopted—and they are nothing more than the provisions of the law that you gentlemen incorporated, except a rule of this kind, that the total mileage or the mileage should not be greater or less than a certain amount which the commission might name as being sufficient to cover the carriers.

For the western territory I suggested as group heads the Union Pacific, the Burlington, the Milwaukee, Santa Fe, Southern Pacific, Rock Island, St. Louis & San Francisco, and the Missouri Pacific; with a notation that group heads or system heads will be increased if and when it appears needful or desirable in the public interest.

Also, with a further suggestion of this kind: The proposed plan is merely to show that it is possible in strict accordance with section 5, as we interpret it, to grant the Nickel Plate application, if facts are proven sufficient to show that it is in the public interest.

For instance, if the commission decides that it is in the public interest to permit the C. & O. to be absorbed in the proposed merger, the plan suggested could be made sufficiently elastic to cover such a situation by the addition of a rule or proviso to the effect that if and when it should be made to appear that there is special reason in the public interest for a railroad in one territory or district to be consolidated with a railroad in another district, the commission reserves the right to approve such consolidation, anything in the general plan to the contrary notwithstanding.

I merely call your attention to that to show that I think a plan can be adopted which would be elastic enough and, at the same time, would be a protection against the possibility of consolidations which could not be unscrambled.

The CHAIRMAN. Are there any questions?

Mr. HUDDLESTON. Mr. Cain, this bill provides two means of consolidation; one by the purchase of one carrier of the property of the other; the other is the consolidation between the owning companies, a merger of the companies.

Mr. CAIN. Yes, sir.

Mr. HUDDLESTON. Of course, the method will be greatly simplified with the elimination of the merger corporations; that is, if we had a bill merely enabling one carrier to buy the property of another carrier. That will be simpler in any of its aspects than the merging of two corporations owning the roads.

I want to ask you what you consider to be the real necessity for the provision authorizing mergers. Will not every proper and reasonable purpose of consolidation be accomplished by permitting one carrier to sell, etc., to another?

Mr. CAIN. Here is the reason, Mr. Huddleston, it strikes me as being sound. It is almost impossible to effect a consolidation, a corporate consolidation. I mean by that, the absorption of the entity of one corporation by another. It is almost impossible to effect that in many instances because of the financial structure.

There are stocks and bonds and securities of one kind and another in the hands of the public which you can not bring into a corporate consolidation, and yet you can bring it into control.

I advocate the right to merge, and I use the word "merge" as the courts frequently use it, as contradistinguished to consolidation. The courts use the word "consolidation" in the sense of corporate consolidation.

But I am much opposed and have so made it plain to the commission on all occasions where I have either spoken or written on the subject, to the present method of merging these carriers under paragraph 2 of section 5.

I think that if you gentlemen do not do something to change that, that we are going to get into a situation where consolidation will hardly be possible of accomplishment, and I will tell you why. I can illustrate it by a concrete case in which I participated.

The Chicago, Rock Island & Pacific Railroad Co. acquired a controlling interest in the St. Louis Southwestern Railway through the purchase of stock. I do not think they fully acquired the control of the stock, but they had an option.

They came before the commission to get its approval of the acquisition of the control of the stock of the Cotton Belt Railroad.

When I saw what was going on, I intervened for a little railroad, the Paris & Mount Pleasant, in that case, which had operating contracts with the Cotton Belt, and opposed it unless the Rock Island and the Cotton Belt should recognize some obligation to take care of little railroads that were dependent upon them and whose traffic arrangements might be disrupted.

In that case the executive officers and the traffic officers of the Rock Island and the Cotton Belt and the Frisco—the Frisco also intervened, the Frisco having purchased at one time the I. & G. N. Railroad in Texas, the Texas Legislature having passed an act authorizing or approving that consolidation. In the I. & G. N. case the commission had refused to approve it, notwithstanding the Texas Legislature had passed this act, and the Frisco had bought the stock on the ground that it was not in accordance with its tentative plan, the I. & G. N. having been allotted to the Missouri Pacific in the tentative plan.

I appeared and took the position that if these mergers were permitted it was inevitable that one of these major carriers would acquire control of the stock of another carrier so important to it as that no matter what the commission said the owners of the control of the carrier that the commission might say ought to go to another system would say, "Well, we have got this stock. We own it. It is a useful property to us, and we will not sell it," thereby making impossible the plan that the commission might have.

In this case I asked questions of the various witnesses who appeared and got them to admit that if they were permitted to get control of the Cotton Belt Railroad through purchase of a control of the stock, that there were no other advantages that they could see except the possible matter of having one overhead, and yet that could not be done. In other words, the witnesses were unable to point out in that case that they would need to go any further in their plans than to acquire control of the stock, because they would have just as good

control and it would be just as effective for their purposes as corporate consolidation.

Now, I merely cite that as illustrative of what I mean, and you will pardon me, Mr. Huddleston, for being so long. But I thought best to give you these concrete cases as showing you why I am opposed to the present law, and yet I think you are going to have to put something in this law. The difference in the present law and the proposed law is that they can not do this now under your proposed law, if it is contrary to the public policy which you announce and which I think the commission must consider not only as a grant of power but as a limitation.

Mr. HUDDLESTON. I really am not sure that I understand your answer as applicable to my question. I asked what the necessity was for a provision for consolidation of corporations, the uniting of two corporate entities as provided for by this bill, suggesting that the power to purchase by one corporation the property of another—not the stock, but the property—might be sufficient for the purposes intended by this bill.

Did you understand that to be my question?

Mr. CAIN. No; I thought what was in your mind was the inquiry as to why we did not have this limited to corporate consolidations rather than to mergers through other methods which are permissible here.

Mr. HUDDLESTON. Will you then address yourself to that? Why is it not enough, when we authorize carriers to buy the property of other carriers?

Mr. CAIN. I do not know that I could give you a sound reason why that could not be done, except of course, that you can not sell the property of a railroad to another carrier unless you confer the power upon the railroad to purchase and the railroad to sell, the physical property.

Mr. HUDDLESTON. To confer that power, both to buy and to sell—would not that answer the purpose of all the proper consolidations?

Mr. CAIN. It might do it. I am not prepared to say that it would not, because that thought had not occurred to me, but it might do it.

Mr. HUDDLESTON. There is a legal question that disturbs me considerably. What is the effect of the Federal Government's conferring powers and franchises upon a corporation chartered by the laws of a State? Does it make the corporation a Federal corporation, or does it leave it the creature of the State in the same sense that it was before?

Mr. CAIN. I do not think it makes it a Federal corporation. I think, just as has been suggested here, that the railroads are instrumentalities of insterstate commerce, and when the States surrender to Congress control, which they did—the States have all the power which they did not surrender, or course, to Congress, but they did surrender to Congress the power of regulating interstate commerce, and in the exercise of that power I do not know of any limitation that has been reached, if you can show that it does affect interstate commerce, even remotely.

Mr. HUDDLESTON. These additional powers, etc., conferred by this bill are upon a creature of the State. If that corporation remains

99790—26——22

the creature of the State, the State may deal with it just as before, may destroy it, if it has the power under its laws and constitution to destroy it, and leave these additional powers up in the air.

On the other hand, if the corporation becomes, by virtue of this Federal recognition, a Federal corporation, the State can not destroy it, can not deal with it, it becomes a creature larger than the State and beyond the power of the State, and not subject to the State's regulation, nor of the State's control, nor of the State's power to tax, nor the other powers and supervision that the States ordinarily control.

Mr. CAIN. I am a citizen of the State of Texas. The railroad that I am personally interested in is also a citizen of the State of Texas. The only difference that I see at the moment is that I am a natural person and the corporation I represent is an artificial person.

I do not see that the artificial person has any greater right or is absolved from the power which Congress may exercise any more than the individual who is a citizen of a State, where Congress exercises powers that are given over to it by the State or by the States when they surrendered those powers.

Mr. HUDDLESTON. The States ordinarily reserve the power to tax the franchises of their corporations. The Supreme Court has held that a State can not fix franchises conferred upon a corporation by the Federal Government—by Congress. I confess strongly to the leaning that if Congress has the power to confer powers upon a State corporation, the corporation becomes, by reason of that conferring of powers, a Federal corporation and that the State can not destroy it in such a sense as to take away its powers.

That presents an aspect in this bill that we are here chartering by Federal charter these interstate carriers, that we are making them creatures of Congress. Would you favor a Federal charter of railroad corporations?

Mr. CAIN. During the time the transportation act was being constructed by Congress, I appeared before this committee and I suggested at that time that I thought it would greatly simplify consolidation if a provision were incorporated in the law for Federal incorporation. At the same time, I do not believe that you are exceeding the powers conferred upon Congress or reserved to Congress in the commerce clause, if you deal with the instrumentalities, no matter what the corporation or what its status may be with regard to the State that creates it.

Mr. HUDDLESTON. I do not think I quite got your reaction. I asked whether you favor as a matter of policy the chartering of interstate carriers by Federal charter. Do you think that that is good policy?

Mr. CAIN. I can not see any objection to it. I can not say that I particularly favor it. I do not see the necessity for it, in other words.

Mr. HUDDLESTON. Assuming that you would favor it and that it is proper and good policy, would it not be better to do it directly, knowing what we are doing, intending to do what we are doing, than to do it indirectly and by accident and unintentionally?

For instance, if we are going to charter railroad corporations, the interstate carriers of the country, we would provide a consistent, sensible scheme of incorporation by which we would confer certain powers and rights on these corporations, but in turn we would impose on them duties and responsibilities and reserve to ourselves, to the Federal Government, benefits, and so on. In other words, we would pass a statute such as any intelligent legislature would pass, in providing for the chartering of corporations. That, I submit, of course, to be the sensible thing to do.

Now, if in point of fact we are making these corporations that take advantage of this fact, Federal corporations by this act——

Mr. CAIN. I do not go that far with you.

Mr. HUDDLESTON. I understand that you do not, but the question is certainly not free from doubt. So far as I know, no one has suggested that the Supreme Court has passed on that issue.

Mr. CAIN. I do not think they have.

Mr. HUDDLESTON. And the logic of it seems to be, I will say to you in all frankness, that the Federal Government, in the proper exercise of its powers, recognizing the existence of an entity of any kind, and conferring charter rights on it, it becomes a creature superior to the laws of the State, and is not any longer merely a State corporation. Now, if that point of view is correct, and if we are making Federal corporations out of these carriers, is it not a very imprudent and improvident, I may say, way to do it in this casual and accidental and what, if it will turn out to be, wholly unintentional way?

Mr. CAIN. I am wondering if you have looked at the other side of the picture. It seems to me that the States that created these corporations still have the right to exercise police power over them, and there are many, many things, that occur in railroading where the State, having the right as it now has, undisturbed, would prefer not to surrender it.

I have not weighed both sides of that question sufficiently to tell you that I entirely disagree with you, but I came to a different conclusion, having in the first instance believed that Federal incorporation was best, after trying to look at both sides of the question.

Mr. HUDDLESTON. The power of the State in the exercise of its police functions would seem to be just as great in the case of an interstate carrier, whether that carrier was chartered under the laws of the State or was chartered by the Federal Government.

Mr. CAIN. No, sir. Just take one phase of it. Unless Congress went further and prohibited it, you would lodge every case in Federal courts, where the State sought to interfere with any power exercised under the Federal charter, would you not?

Mr. HUDDLESTON. Wouldn't you say that the police powers of the State of Texas remained the same over the Texas & Pacific as they do over a Texas corporation operating a carrier in that State?

Mr. CAIN. Well, I do not know. For the moment, I am not able to point out anything; any power the State might want to exercise as a police power that they could not over the Texas & Pacific, except, as I suggest, the jurisdiction of courts over the Texas & Pacific Railroad. The Texas & Pacific Railroad has constantly and consistently refused to surrender that general Federal charter, because of the advantages that it thought it had under the Federal charter.

Mr. HUDDLESTON. We had a case here the other day referred to the committee, Kentucky against the Louisville & Nashville Railroad Co. (167 U. S.), which seemed to hold that the States had the right to exercise their proper police powers over interstate carriers.

It is important that we know the effect of confering these powers. Does it make it a Federal corporation? If so, we ought to know it and act advisedly. If it does not, then an entirely different line of action would be called for.

Mr. CAIN. I concur in your view; if I could reach the conclusion that this would make a Federal incorporation, I should not see any reason why we should not go directly to it and include in this proposed legislation authority to have Federal incorporation.

Mr. HOCH. Mr. Huddleston, will you pardon a suggestion right on the point you are discussing?

The present law provides for supervision of the issuance of securities by these corporations,, although holding State charters. If your reasoning is correct, and I see the force of it, would not the same proposition apply to the present situation, where the law provides that the corporations may issue securities, if permitted to do so by the commission, regardless of anything that the State may do about it, and haven't we thereby done the thing you are mentioning, and the same question would be raised, to a certain extent, under the present law?

Mr. HUDDLESTON. No; I think not, for two reasons. The first is that that provision of the law is restrictive. It puts a limit on what the corporation may do; whereas this is enabling and expands what the corporation may do, and confers additional powers upon it that it did not previously enjoy. That does not relate to a corporate power. It merely relates to a corporate activity.

Mr. HOCH. I was questioning whether it did.

Mr. HUDDLESTON. And I take it that Congress has the undoubted right to prevent the inflation of securities of a carrier which would impose a burden on interstate commerce, which might impose a burden on interstate commerce. I do not think that that can be doubted.

Mr. HOCH. I call your attention to just one sentence that I happen to turn to. I have not had any opportunity to examine this provision of the present law carefully. This is paragraph 7 of section 20–a, which has to do with the securities; and it provides:

> The jurisdiction conferred upon the commission by this section shall be exclusive and plenary. A carrier may issue securities and assume obligations or liabilities in accordance with the provisions of this section, without securing approval other than as specified herein.

It seems to me something more than merely restrictive.

Mr. HUDDLESTON. I should say this in addition. I think that Congress has the undoubted right to impose conditions upon corporations organized under the laws of the State upon which it may enter into the business of interstate commerce. I do not think that there is any doubt about that, but the conferring of a power, the saying to a creature of the State that "you may do this thing which your parent, your creator, has not permitted you to do," is a very different thing.

Mr. HOCH. Suppose that a State would deny to the corporation the right to issue securities, as permitted by the commission.

Wouldn't you then have the same question of the conflict of power and the question whether you had not to that extent at least constituted a State corporation a Federal corporation?

Mr. HUDDLESTON. I do not think so, although that would be a stronger case.

The CHAIRMAN. Are there any other questions?

Mr. GARBER. I was not here when you gave your qualifications. I should like to hear you state what they are.

Mr. CAIN. I think I stated, Mr. Garber, that in 1908 I assumed complete control of the construction, and afterwards the operation, of a railroad 100 miles long in the State of Texas. I came here in 1918 and accepted service with the American Short Line Railroad Association as its vice president and general counsel, and that association represented from four hundred and sixty-five to five hundred and some odd of the short railroads of the United States during that period of years.

Mr. GARBER. In what capacity?

Mr. CAIN. I beg your pardon.

Mr. GARBER. You represented them in what capacity?

Mr. CAIN. As counsel in charge of their affairs here in Washington.

Mr. GARBER. Their legislative affairs.

Mr. CAIN. Not only that, Mr. Garber, but they have consulted me even on their local affairs.

Mr. GARBER. They comprise about 10 per cent of the mileage?

Mr. CAIN. Twenty-two thousand miles of Class II and Class III railroads, and while we represent some Class I railroads——

Mr. GARBER (interposing). You have frequent conversations with executives of these short lines?

Mr. CAIN. Daily, with somebody.

Mr. GARBER. And negotiations and conversations with the executives of the other lines as well?

Mr. CAIN. Yes, sir; I have been their doctor.

Mr. GARBER. You have informed yourself in regard to their disposition toward the new policy of consolidation?

Mr. CAIN. Yes, indeed. We have annual meetings, in which we have discussed this for the last five or six years; as well as discussing it individually.

Mr. GARBER. What are the underlying, motivating causes of consolidation on the part of the executives?

Mr. CAIN. To avoid the almost impossible situation of eternal competition with the strong railroads.

I explained that these roads had been struggling for their existence under adverse circumstances. Of course, some of them are not suffering so much, but many of them are suffering greatly from their inability to compete with the strong railroads for business.

Mr. GARBER. That is the motivating cause of the weak roads, but what are the motivating causes of the strong roads to consolidate?

Mr. CAIN. I can not tell you what their views are, because I do not represent them.

Mr. GARBER. I understood you to say that you had been in frequent intercourse with the executives of all roads.

Mr. CAIN. You misunderstood me. I meant of the roads I represent.

Mr. GARBER. You are competent to give us your opinion upon that phase, anyway, are you not?

Mr. CAIN. I would not like to say so.

Mr. GARBER. I will ask you this, if the motivating cause for consolidation among the executives of not only the weak roads, but the strong roads, is to rehabilitate the lines, to strengthen their credit, to increase their finances and their rates, and the returns on their investments to the stockholders?

Mr. CAIN. I think you are undoubtedly right.

Mr. GARBER. There is not any concealment about that, is there?

Mr. CAIN. None whatever.

Mr. GARBER. If that is true, then, the public is interested and should jealously see that its interests are safeguarded in this proceeding, so as to see that the rates are not increased beyond a reasonable rate, and to see that the competitive service now existing should be maintained; isn't that right?

Mr. CAIN. I agree with you.

Mr. GARBER. Those are the two propositions that the public is interested in. Now, how are you going to maintain the competitive service that now exists by the consolidation of these railroads?

Mr. CAIN. You failed to mention one thing that I think the public is more vitally interested in than anything else, that is adequate transportation service.

Mr. GARBER. What?

Mr. CAIN. Adequate transportation service.

Mr. GARBER. There is not any complaint as to the adequacy of that service now, generally throughout the country, is there?

Mr. CAIN. If I knew where you lived, I might answer you.

Mr. GARBER. I live in the State of Oklahoma. There is not any complaint down there as to the adequacy of the service being rendered.

Mr. CAIN. I think there is in some parts of Oklahoma. I think I can show you some short line railroads that are not giving the best service, not giving the service that the people would like to have.

Mr. GARBER. So that your contention is, by consolidating the weaker road with the strong, this adequacy of service would be increased to the public?

Mr. CAIN. Undoubtedly. You can not have adequate service unless you have got credit to build these carriers up to where they can give it.

Mr. GARBER. I want to put a practical proposition to you. Here is the Rock Island Railroad and the Frisco Railroad and the Santa Fe Railroad, trunk lines running through the West, through Kansas and through Oklahoma. If they are merged and consolidated, what becomes of your competitive service to the people and the producers of those States?

Mr. CAIN. You are putting in this bill an injunction to the commission to preserve, as far as it can, competitive service.

Mr. GARBER. That is put in here as an expression of policy. There is not any prohibitory clause in there, that no consolidation shall be permitted that would destroy competitive service.

Mr. CAIN. I think I can say to you as my opinion, that you need not have any fear that the commission is going to let the Santa Fe and the Frisco consolidate, or the Santa Fe and the Rock Island consolidate.

Mr. GARBER. The Frisco and the Rock Island are consolidating right now, are they not?

Mr. CAIN. They are making some sort of arrangements, but that has not come before the commission. Railroads have attempted some consolidations that the commission has not allowed. We do not know that they will allow that.

Mr. GARBER. I am informed that they have taken preliminary steps before the commission to consolidate.

Mr. CAIN. The only steps they have taken before the commission are an application to allow them to put some common directors on both of those corporations' boards.

Mr. GARBER. That is for the purpose of consolidation?

Mr. CAIN. Well, of course, we can guess that they would like to consolidate, but that does not mean that they will consolidate.

I will say this to you: They are not going to consolidate if I can prevent it, unless they can take care of the short-line railroads. I am going to intervene.

Mr. GARBER. I am very glad, indeed, to hear that.

Mr. CAIN. I have been making myself bothersome in some of those cases, and I will promise you that I will keep it up.

Mr. GARBER. But this is a concrete practical question. These three roads serve those several States. There is nothing in this bill that would prevent or prohibit the Interstate Commerce Commission from merging or consolidating these three trunk lines, serving that producing western territory, and if they were merged and consolidated it would destroy what little remannt the public now has, and that is, competitive service.

Mr. CAIN. It would destroy competitive service, undoubtedly in some of those localities; yes, sir.

Mr. GARBER. Then there ought to be a safeguarding provision in this bill, ought there not, covering that very proposition, prohibiting consolidation where it would destroy competitive service?

Mr. CAIN. Well, I think you have got to weigh the public interest, of course, and if you put it in the same language that you have got it in the present bill or law, or in the Cummins bill—I am quite familiar with the provisions of this bill—I think you would have safeguarded the public interest.

The people of Oklahoma, of course, are entitled to be protected as far as it is possible to protect them, and their interests must be furthered, as far as it is possible to further them, but you can not consider Oklahoma as by itself. No man and no State liveth unto itself, and no railroad liveth unto itself in this day and time.

Mr. GARBER. We are not asking that. We are asking Oklahoma to be considered along with Kansas, Nebraska, and Iowa and other agricultural States.

Mr. CAIN. I know, but we are all prone to view any measure from our own particular situation. And I am merely suggesting that in any clause you put in here, that is to protect Oklahoma against a loss of competitive service, you should, as a matter of course, take into consideration the broad public service to the country as a whole.

Mr. LEA. To what extent is the traffic of these short lines competitive?

Mr. CAIN. There are some 200 of them, as I recall, Mr. Lea, which connect with more than one system of railroads. In other words,

you take the little road that I am connected with, and it connects with four of the proposed systems at different points.

Mr. LEA. So if we have a clause that prohibits the elimination in any section of competitive service, it permits that road to come in?

Mr. CAIN. Yes, sir.

Mr. LEA. That means, I suppose, that somebody must have discretionary power in determining to what extent competition in service may be eliminated.

Mr. CAIN. Precisely.

Mr. LEA. Would this bill leave that to the Interstate Commerce Commission?

Mr. CAIN. Yes, sir.

Mr. LEA. Without any limitation on the extent to which they should go or may go?

Mr. CAIN. My recollection is that they are required to preserve competition as far as possible. I know in the present law they must preserve competition as far as possible, and existing routes and channels of trade as far as practicable. Congress was careful to use two words there, and I claim the one is stronger than the other. I claim when they said to the commission, "You must preserve competition as far as possible," it meant that, considering their duty to the country as a whole, they should preserve these competitive situations, if possible.

Mr. LEA. To preserve competition, one might say, is a minor consideration compared to consolidation, is it not?

Mr. CAIN. It should not be subordinate, in my opinion, to the preservation of competitive conditions.

Mr. LEA. As I understood you the other day, you consider that the recapture clause was intended in part to do what is sought to be accomplished by consolidation?

Mr. CAIN. Yes, sir; I think it is a good substitute until we have consolidation.

Mr. LEA. But you think that has only in part been effective?

Mr. CAIN. Well, of course, the recapture has not been effective for two reasons: In the first place, the commission has not concluded its work of valuing the roads and, of course, the carriers can not fix what amount is payable to the Government; and in the second place, the present recapture law only requires the commission to recapture 50 per cent of the excess. This bill, as I suggested, should give the commission the power or make it its duty to recapture after a certain period, say five years, the whole of the excess; but I think the excess should be based upon a three years' period or a five years' period rather than one year, because we have lean years and fat years, and a road that earns in a fat year ought to have some protection against a lean year. That is particularly true of short-line railroads, because our traffic fluctuates so.

Mr. LEA. Do you think the recapture clause has been of any benefit to the weaker roads?

Mr. CAIN. None whatever to them, Mr. Lea.

Mr. LEA. Has it not in a way been a justification for a higher level of rates than would have otherwise prevailed?

Mr. CAIN. I can not see it, if that is true. I can not bring my mind to that.

Mr. LEA. You think that is theoretical, so far?

Mr. CAIN. I think it is purely theoretical.

Mr. LEA. Do you think the recapture clause has been of any benefit to the stronger roads?

Mr. CAIN. No; I can not see that it has.

Mr. LEA. Under the present arrangement——

Mr. CAIN (interposing). Pardon me a moment. Let me go back to your question. Of course, it has been beneficial in this respect: As I tried to point out, it is the established right of government now, under the decisions of our courts, to limit the earnings of a public utility. Now, of course, when Congress passed a law that said to the commission, "You can only allow these roads to have 50 per cent of the excess over 6 per cent," you are recognizing that they are given the right to earn more than what we call a fair return.

Mr. LEA. I do not know anything about railroading, but I have the feeling that possibly this recapture clause did not allow latitude enough for the encouragement of efficient management. When an efficiently managed railroad is able to produce over 6 per cent, we are supposed to take half of it away. The difference between really efficient management and ordinary management certainly must be more than one-half of 1 per cent on the earnings of a railroad. What do you think of that provision as a discouragement to efficient management?

Mr. CAIN. I do not believe it discourages efficient management. I know many roads that are not earning 5¾ per cent, and I claim they are managed just as efficiently, and I think the management is trying just as hard to make it efficient as the road that is earning more. Of course, they have no money to pay with, and they do not use their revenue because they haven't got it to rebuild tracks and lower grades and reduce curves and put on heavier engines and finer equipment.

Mr. LEA. One of the purposes of the transportation act, I take it, is to encourage the best possible management of railroads. If we want to do that, one of the most practical ways is to give it a suitable reward for doing it.

Mr. CAIN. Mr. Lea, the management of railroads are usually salaried people, and they want to keep their jobs. They have an ambition to do that. The man who reaps the revenue of the road is the stockholder or bondholder. The man in charge of operating that road gets a salary. He wants to hold it, and he wants to climb higher. I do not think that feature of the recapture affects the management. I do in all candor believe that 5¾ per cent or 6 per cent is very low and does not provide for emergencies.

Mr. LEA. Is not that a discouragement to the prospective purchaser of stock in a railroad, when he knows there is little probability of earning materially over 6 per cent? Why should he not earn more, if they have a really effective road that gives the public service?

Mr. CAIN. I think the investment in stock is largely governed by the stability of the corporation. A corporation that is stable, like the Santa Fe, it does not make so much difference that their earnings are limited. The man that buys that stock knows he is going to get a fair return, and that is what he wants to know. You buy Government bonds at 3 per cent because you know they are good.

Mr. LEA. The belief seems to be commonly entertained that the recapture clause is a temptation to railroads to conceal their earn-

ings, try to keep them apparently below the 6 per cent level, and maybe spend that excess amount in advertising or unnecessary improvements and other extravagances. What do you think about that?

Mr. CAIN. I know that is a popular contention, but I think it is fallacious. The law requires the commission to police the operation of the railroads, and I think the commission does its duty in a most efficient way. If you make the appropriations the commission is going to see that they operate these railroads honestly, economically, and efficiently, so far as there is any disposition not to do it. I have not found in my contact with railroads, large and small, that there is any desire to cover up or hide anything from the Government. I find a disposition, of course, not to pay that recapture, because they all contend that the recapture is not based upon the fair value of property.

Mr. LEA. You spoke about one of the burdens of the short lines being the unfair joint rates.

Mr. CAIN. Yes, sir; the divisions. And the fact that many of the large roads do not put in through rates, do not agree to the establishment of through routes.

Mr. LEA. Is it not the duty of the commission to raise those rates?

Mr. CAIN. Yes; but, of course, the commission can not act, as I pointed out the other day. Probably a very good illustration of that situation is the Kansas City Northwestern, which might have gotten, through personal solicitation, at Kansas City the routing of freight destined to the Pacific Coast. If it could have gotten the Union Pacific to put in a through route from Kansas City to the Pacific Coast, it could have hauled that traffic from Kansas City 163 miles to its junction in Nebraska with the Union Pacific, but the Union Pacific also runs to Kansas City, and they said: "We will not put in that through route, because you make us short haul. You make us take traffic at our junction in Nebraska that we could haul from Kansas City."

Now, again, the commission can not go on, without careful investigation, and grant an increase of divisions. Many of these little railroads, Mr. Lea, are entitled to a substantial increase in divisions, I may say the majority of them. But it is human nature for them to refrain from coming before the commission and engaging in a contest with a strong competitor, because they get favors from the strong competitor or from the line with which they connect that they fear might be denied them, in the first place; and in the second place, it costs money, and they do not know how it is going to turn out.

Mr. LEA. If you had a provision that took the money from the strong road in the recapture clause and gave it to the weaker, there would not be any business principle in that, would there?

Mr. CAIN. I do not know that I get your meaning.

Mr. LEA. I say, if you had a provision that would take money from the stronger road through the recapture clause and give it to the weaker lines, there would not be any business principle in such a provision as that, would there? That would be distribution of funds without reference to economic earnings.

Mr. CAIN. I am sure you did not understand the foundation of my suggestion. I tried to point out that the roads of the United States must be considered as a transportation plant, and each road

ought to be preserved; that is, each road that has business efficiency to prevent its abandonment. But every unit in that transportation plant and the entire rate level is based upon the aggregate value of the units. Now, it costs a road out in thin territory, for the transportation it produces, using the termini as a unit, perhaps five times as much to produce that transportation for a mile of railroad as it does the railroad with which it connects. Therefore, there is the difference of 1 to 5 in the cost of producing that transportation. In other words, for the transportation produced by the road in thin traffic that road has earned five times as much out of that traffic as the road that hauls it for 1 cent per ton per mile. Therefore, I say that, using the theory of the transportation act, the road that hauls the traffic earns whatever it costs it to produce the traffic, no matter what it is.

Mr. LEA. But you could not properly reward that short road by taking money from the recapture clause.

Mr. CAIN. It would not be a reward.

Mr. LEA. You propose to pay it for what it earns? That is your theory?

Mr. CAIN. My theory is this: These roads are compelled to operate just as effectively as if the Government had said to them, as it says about carrying the mails: "You have to operate these roads." All right. Now, if they have to operate them, the owners of the roads that operate them produce transportation at a certain cost. If I am a carrier, and I take you out in an automobile and haul you 5 miles and charge you $1 for it, if it takes that dollar for me to produce that transportation, I have to charge that dollar or that transportation will not be there. If I have earned it, no matter what it cost, I am entitled to charge it, if I am required to operate the property.

Mr. LEA. Is not that an argument for the commission giving you an adequate rate on your line, rather than for a division of the rates?

Mr. CAIN. Undoubtedly, if it could be done, but you must understand that it can not be done.

Mr. LEA. Suppose you have a short line running from A to B, and a long and stronger road running from B to C, a greater distance?

Mr. CAIN. All right.

Mr. LEA. Your short road brings in traffic that makes you $1, but makes the other road $5. Another man ships only from A to B on your road. You could not charge one any higher rate than the other.

Mr. CAIN. No; you can not charge the people on one road any higher rate than the people on the other road, necessarily, because, if you did there would not be any business there. You would move off of it, or I would move off of it, and there would not be any traffic. If you are going to keep increasing the rates, it would be an endless circle.

Mr. WYANT. Senator Frelinghuysen, of New Jersey, appeared before this committee a short time ago, and in speaking of the inefficient management of the St. Paul Road he seemed to lay considerable stress on the fact that the management of the railroad had no financial interest in the road. I was just wondering if that condition prevails generally among other railroads.

Mr. CAIN. I think it does. I think the management of these roads are salaried people and do not own the stocks or bonds.

Mr. WYANT. Do any of the records of the commission show what interest the management of these railroads have in the roads?

Mr. CAIN. The records show who the owners of all the roads are. In other words, they show the stockholders. Let me explain myself. I do not mean the records show who own the bonds, but I mean the stock. Of course, the owners of the stock control the operation of the road through the directors. They elect the directors, and the directors select the management. The proposed amendment to which I alluded in the beginning of my statement this morning is as follows:

PROPOSED ADDITION TO H. R. 11212

If at the end of five years from the passage of the railroad consolidation act of 1926 the railroads of the United States have not, in the opinion of the commission, been consolidated or merged into strong, efficient, and well-balanced systems in accordance with the policy set forth in section 202 and the provisions of this act, the commission shall, as soon as practicable, after notice and public hearing or without such notice and hearing by order, either at one time or progressively as it may determine, group the carriers into such provisional systems as it may deem practicable for the purpose of enabling it to make an equitable distribution of the revenue derived from the rate structure either through divisions or the general railroad contingent fund required to be established by this act or for the exercise of such other regulatory powers as may be lawful and practicable either by the establishment of groups additional to systems which may already be authorized by the commission or by allocating to any existing system any carrier or any railway properties not included in any such approved consolidation or unification. The commission may at any time after establishing a provisional system or group, either upon its own motion or upon application, make changes in such group by eliminating therefrom a carrier or carriers not consolidated or merged by agreement approved by order of the commission or adding thereto such a carrier or carriers.

The CHAIRMAN. You may be excused. We will call Commissioner Hall.

STATEMENT OF HON. HENRY C. HALL, MEMBER OF THE INTERSTATE COMMERCE COMMISSION

The CHAIRMAN. Mr. Shallenberger wants to ask you some questions.

Mr. SHALLENBERGER. I want to ask you a question or two for my own information. Mr. Cain, who just preceded you, called our attention to a condition he pointed out, that there has been considerable of an attempt to effect mergers or consolidations under paragraph 2 of section 5, by one carrier, as I understand it, acquiring by lease or otherwise, the control of another carrier, but not by actually merging the two or consolidating them into a single system for ownership and operation. Is that true?

Mr. HALL. Yes. We have had a number of such applications, and have now.

Mr. SHALLENBERGER. Would this law under consideration change that principle? Is that same policy made possible under this law?

Mr. HALL. The bill you are now considering?

Mr. SHALLENBERGER. Yes.

Mr. HALL. The bill which you are now considering would take the place of these provisions of the existing laws regulating the acquisition or control of carriers, found in paragraph (2) of section 5, and also the place of the provisions of paragraphs (4) to (6) of that section with regard to consolidating properties not carriers.

Mr. SHALLENBERGER. In other words, this policy would not be possible under the new law? Do you construe that this bill would require the merger to be complete?

Mr. HALL. On the contrary, one of the advantages of this Parker bill is that it will make possible unification in several ways: Either through the actual acquisition of properties to be owned and operated by the same corporation or through control of carriers by acquisition of securities or by lease in various ways that are referred to in the bill itself. It may be said that the existing systems have grown up chiefly by use of these methods which are excluded from the consolidation provision proper of the existing statute.

Mr. SHALLENBERGER. Of our present law?

Mr. HALL. Of our present law, as it stands now.

Mr. SHALLENBERGER. Paragraph (2)?

Mr. HALL. Of the Parker bill?

Mr. SHALLENBERGER. No; the present law. Are you permitting these things to be carried out under the present law?

Mr. HALL. Applications have been made under paragraph (2) of section 5. Some have been granted and some have been denied.

Mr. SHALLENBERGER. What I fail to understand yet, Mr. Commissioner, is where there is any material change in this particular feature we are now discussing in the two laws. If two railroads want to merge under the present law, and you decide that is in the public interest, you can permit it?

Mr. HALL. We can permit that acquisition of control either by lease, stock ownership, or otherwise, under paragraph (2) of section 5 which says that can be done under a lease or by the purchase of stock, or in any other manner not involving the consolidation of such carriers into a single system for ownership and operation.

Mr. SHALLENBERGER. That is the provision we are eliminating from that law?

Mr. HALL. No, sir. When you turn to the existing provisions in paragraphs (4) to (6) for consolidation, it only contemplates one form of consolidation, as I understand it, which is the bringing of railway properties into one corporation for ownership and operation, for operation as well as ownership. Therefore, it seems to me that the Parker bill is a very good improvement upon the existing statute, because it permits unification in other ways.

Mr. SHALLENBERGER. By "unification" you mean what?

Mr. HALL. I use that term because consolidation is frequently thought of as representing the consolidation under statutes providing for consolidation of corporations, whereas unification may take various forms. It might be by organization of a new corporation which would take over the properties of existing corporations; or it might be by acquisition of control either through lease or stock ownership, or both, or in some other way, some one of the ways the large systems have built up in the past.

Mr. SHALLENBERGER. Has the policy of mergers that we have been permitting worked to the disadvantage of the public, do you think?

Mr. HALL. I sincerely hope that it has not. We have tried to protect the public interest, and I think we have.

Mr. SHALLENBERGER. And your reason for favoring the Parker law is that there should be further power than in the present law?

Mr. HALL. I think it very greatly simplifies the process of consolidation or unification, whatever term you use. That seems to be the declared policy of the administration and of the Congress. If so, then it is desirable to make the statutory provisions workable in order to facilitate the attainment of that end. To my mind the advantage of the Parker bill, is that it accomplishes just that.

Mr. SHALLENBERGER. Looking at it in a general way, the present law provides for a broad plan of consolidation, but under this bill it is possible to effect each scheme of consolidation, to permit two railroads to come before the commission and merge under this particular feature?

Mr. HALL. Yes; two or three or more.

Mr. SHALLENBERGER. Rather than have to deal with the full general plan?

Mr. HALL. Yes, sir. It permits the growth of nuclei, any one of which may become ultimately the heart of the system. It all tends toward consolidation.

Mr. SHALLENBERGER. In paragraph 4 of section 5, in contemplating or discussing this policy of consolidation, I find this language:

> In the division of such railways into such systems under such plan, competition shall be preserved as fully as possible and wherever practicable the existing routes and channels of trade and commerce shall be maintained.

In this law for the first time I find in the United States statutes competition between roads referred to as competition in service. Is it the judgment of the commission that the word "competition" means competition in service? Is not that a new principle laid down in the law?

Mr. HALL. Substantially the competition referred to is competition in service at present. It does not literally or absolutely exclude all rate competition. That is to say, there is nothing in the law now to hinder any carrier, if it sees fit, from proposing a lower rate from A to B than is in existence. If it files a tariff to that effect, and the tariff is protested and, after a hearing, finally approved as having been justified, and goes into effect, the other carriers serving those same points would probably meet that rate. But, as a practical matter, the thing that most interests the shipping public and the traveling public is competition in service.

Mr. SHALLENBERGER. So far as my limited knowledge extends, the cost is the essential thing that is important in transportation. The cost of the transportation is more substantial than what we call service. In other words, cities have been built up, as you and I know. The coal business is affected right now by competition in rates. We have had it before this committee at this session of Congress, where 10 or 15 cents a hundred made a very material difference in the coal situation. I want to know if we are not putting into the law something that has never been written into law before. I can not find anywhere in the present transportation act where competition in service is made a factor. We declare the policy of Congress and the Government in this act to be, among other things, to preserve the advantages of effective competition in service.

Mr. HALL. Well, you will observe the language there, Governor: "* * * preserve, as between themselves, the advantages of effective competition in service, so that the properties of the carriers in each system shall ultimately be managed and operated and owned or controlled by a single corporation"—that is one of the objectives—"economy be promoted"—that is another—"unnecessary duplications and wasteful competition eliminated"—that is another—"better service afforded"—and finally, "and the traffic moved at the lowest rate compatible with the maintenance of adequate and efficient transportation service." I do not see anything in that language which would exclude whatever benefits could come from any form of competition.

Mr. SHALLENBERGER. Under the form of consolidation provided in this bill, a petition is brought before your commission upon a vote of the directors of the two companies that vote to consolidate. Is not that one of the first things that is done? What I have in mind is this: As I read the law, two or more carriers may, through their boards of directors vote for unification. Then they come before your commission and you pass your judgment upon that. Then section 205 provides:

> Any carrier, in order to bring about a unification through the securing of control by the acquisition of securities in accordance with the policy declared in section 202, may petition the commission for the approval of a plan to be effected by the acquisition by such carrier of securities issued by any other carrier or carriers, if such plan has been adopted by the board of directors of the petitioning carrier.

By a vote of the board of directors they may be authorized by the commission to acquire the securities of the carrier they propose to be consolidated with? Is that right?

Mr. HALL. That, in a way, takes the place of the existing paragraph (2) of section 5, where one carrier is permitted to acquire control of another carrier through the purchase of stock.

Mr. SHALLENBERGER. What I wanted to get at was this: I can see where the boards of directors representing two carriers can speak for them and decide they want to consolidate or bring about unification. Here is a large corporation, say the Frisco, which wants to take over another railroad, or vice versa. The directors may meet and pass a resolution proposing that unification, and having secured the consent of the commission, they can begin to acquire the securities of this other corporation without requiring the board of directors of the other corporation to act at all.

Mr. HALL. Yes. They can do that now.

Mr. SHALLENBERGER. They can do that now?

Mr. HALL. Yes; as long as it does not amount to control. There is nothing to hinder one company from going out and purchasing securities in another company so long as it does not acquire control of that other company.

Mr. SHALLENBERGER. They do not have to come before your commission and secure your approval?

Mr. HALL. Where they go out and make a purchase of shares of stock or bonds or whatever it may be of another company, they do not. It is only when it is a question of acquiring the control of that company that they have to come to the commission, as I understand it. I am speaking subject to correction.

Mr. SHALLENBERGER. Then, having acquired control of the securities of the other corporation, and the minority stockholders refuse to come in, this bill provides a way whereby their securities may also be secured by condemnation.

Mr. HALL. I trust I made myself plain in what I was saying. I did not intend to say and do not think I did say that under the existing law one corporation could acquire the control of another through purchase of its securities without the approval of the commission.

Mr. SHALLENBERGER. I thought that was true.

Mr. HALL. There is nothing in the existing law to prevent its buying 5,000 shares, if that does not amount to control.

Mr. SHALLENBERGER. But they can not acquire control without your consent.

Mr. HALL. That is true.

Mr. SHALLENBERGER. Is it fair to say this bill provides a way whereby two railroads can agree to consolidate, through their board of directors, having secured your approval, or where one railroad seeks to secure control of another, and the Interstate Commerce Commission approves that action, it can secure control?

Mr. HALL. Yes; they can do it now.

Mr. SHALLENBERGER. Does this law provide a way whereby they can secure control where one road does not want to come in?

Mr. HALL. The existing law?

Mr. SHALLENBERGER. Yes.

Mr. HALL. Just what was your question, please?

Mr. SHALLENBERGER. Say one railroad does not want to come in. You decide it is public policy and to the best interests generally to bring it in. The road that wishes to consolidate has voted for it and is ready to take it over. Does this bill provide a way whereby that can be done?

Mr. HALL. No.

Mr. SHALLENBERGER. It does not go that far?

Mr. HALL. No, sir. After we have approved a plan, which is only after a hearing, then they must proceed to have action by their respective stockholders as to whether or not they want to adopt that plan.

Mr. SHALLENBERGER. Would it require a majority of them?

Mr. HALL. There is nothing in it except voluntary action. There is no corporate action that can be compelled, as I read the law. If a minority holder of voting securities does not assent to this plan, and that includes stock and such bonds as have a voting right, if he does not assent to this plan, then he has to resort to this condemnation proceeding, so far as his own holdings of shares or securities is concerned, and in like manner the acquiring corporation may resort to that.

Mr. SHALLENBERGER. Section 207, discussing the order of the commission in regard to consolidation, provides that:

> If, after hearing, the commission is of the opinion that the carrier that is to be made a party is insisting on unreasonable terms, the commission may revoke or modify the conditions or prescribe the terms on which the carrier may be made a party to the proposed unification.

Is there any power in that clause to enable the commission to bring pressure on the carrier to compel it to come in?

Mr. HALL. I assume that your question applies to a state of affairs like this: Three or four carriers come to the commission with a plan proposing unification by one of these various methods. This plan has been sanctioned by their respective boards of directors and is presented to us. We have a hearing, which is open to those who have any interest in it, and certain officials have to be notified of it. As the outcome of that hearing and the representations made we reach the conclusion that a carrier not named in that plan, not presented to us and not participating in the application, perhaps, although there is provision here that such a carrier might intervene, should be included in that unification. In authorizing the adoption of the plan we do it subject to conditions, and one of the conditions is that this carrier shall be included in the unification on reasonable terms. I do not regard that as exactly pressure on the carrier that we name. If it is anything, it is pressure on the carriers that are here as applicants and trying to get together. We say: Yes, but in the public interest you ought to take over this line that is not included. The natural thing to do under the circumstances would be for those applicants to get together and see what kind of an arrangement they can make, at what price, and on what terms that line which is named in the conditions will come into the combination—and whether those terms are acceptable to those who seek to form the unification.

Then if, in their judgment, the terms named are such as are not acceptable or are unreasonable, this provides a way by which they can come back and show to the commission that the carrier named in that condition can not be acquired on reasonable terms. If we should reach the conclusion that they are right about that, we could either revoke the condition, or modify the condition, or we could prescribe the terms on which this carrier may be made a party to the proposed unification.

Now, suppose we prescribe those terms, and the applicants are not prepared to pay that figure, they are stalled and can not go ahead. If, in the other hand, the carrier that was named is not prepared to come onto the combination on that figure, there again I think you have a deadlock, because, as I read it, throughout this bill there is not to be found the element of compulsion. We may sanction or authorize a plan and the carriers, if they see fit, acting by a majority of their voting securities, may carry out that plan; but if they do not see fit I find nothing that will compel them to do it.

Mr. SHALLENBERGER. That was the point I wanted made clear, whether or not the compulsion would be upon the carrier that did not want to come in, whether or not you had power to bring pressure on them and compel them to come in.

Mr. HALL. No. We could not compel them to come in. We could outline what we deem to be reasonable and appropriate terms upon which they could come in. If they do not choose to come in on those terms, it is not proposed that Congress shall give the commission power to compel the others to take over that carrier on its unreasonable terms, found so by us, or to compel that carrier to come in on terms which we deem reasonable, but which it does not deem reasonable. The element of compulsion, as I see it, is not included in this bill.

Mr. SHALLENBERGER. On page 18, section 214, the bill provides that:

> No tax shall be levied or collected under any revenue law of the United States, or by or under the authority of any State or any subdivision thereof, in respect

of any issuance, sale, delivery, or transfer of any security or any agreement to sell, or memorandum of sale of, any security or any grant, assignment, transfer, or other conveyance of any interest in real or personal property, in respect of the incorporation or reincorporation of any carrier, or in respect of any other means or proceeding necessary or appropriate to carry a unification into effect, if in pursuance of a unification approved by the commission under this section. Gain from the sale or other disposition of property, or income from any distribution, in connection with any such unification, shall not be subject to tax by or under the authority of any State or any political subdivision thereof.

What is the equity in a provision of that sort? Why should not the profit brought about be taxed under that law?

Mr. HALL. Governor, in sending our report to the chairman of this committee I think we ought to have included the qualification, as we did in our report to the Senate committee on the Cummins bill, that, in so far as the taxation feature is concerned, we do not regard ourselves as informed by experience or competent to express a view. I think we should have made the same statement to Mr. Parker. Mr. Fulbright called my attention to that aspect, and I think it might need some clarification, but we can not help you, inasmuch as the commission has very little occasion to familiarize itself with the law on taxation of incomes, either individually or collectively.

Mr. SHALLENBERGER. What is your judgment as to the gain or profit to be made by the railroad corporations if this plan of unification or consolidation is carried out? Is it possible that large profits to stockholders will be accomplished by this consolidation? Do you think speculative profits might be made?

Mr. HALL. All things are possible; but I suppose the commission is expected, among other things, to look out for that, and I think our record will show that we are vigilant in that regard.

Mr. HUDDLESTON. Mr. Hall, referring to the subject of taxation, to which Governor Shallenberger directed your attention, these gains or profits which are exempted from taxation by this article are gains or profits of individuals or stockholders and others which in no event would properly be charged against the public. Is that correct?

Mr. HALL. I think it includes that class, but I do not think it is confined to them.

Mr. HUDDLESTON. Do you have in mind any class in which the tax so paid would be chargeable to operating expenses by the carrier?

Mr. HALL. Suppose the property of one carrier, under a unification of this kind, is transferred to and becomes the property of another carrier, and in that operation gain is realized over and above the cost to the vendor. That would not be a case of an individual holder of shares disposing of them at a figure above what he paid for them.

Mr. HUDDLESTON. Would the commission feel like allowing that item as a matter of operating expense?

Mr. HALL. Oh, no; I think not. In the operation that I was speaking of, the transfer of railroad property from one company to another, the selling carrier would in the end wind up its affairs. It would cease to operate and cease to be subject to our jurisdiction, and we would not have anything to do with it.

Mr. HUDDLESTON. Would the public service be served, so far as you can see, either as a commissioner or citizen, by exempting those gains from taxation?

Mr. HALL. I hesitate to express myself as broadly as that. I have put in a demurrer already that I am not informed by experience in regard to the taxation provision of this bill, but I can conceive that in a large operation involving unification it might be that the amount of tax would be very large, representing the gain as compared with the original cost of the property 40 or 60 years ago, and that tax might be so large as to constitute an obstacle. I assume that those who framed that provision as to taxation had some such situation as that in mind, but I do not know about it, and I do not regard my opinion on the question of taxation as worth very much.

Mr. HUDDLESTON. In short, would you not think people who were going to make a profit and found they had to pay a tax on it, might not be so willing to enter into the transaction?

Mr. HALL. They might want more profit.

Mr. HUDDLESTON. That same argument applies to all property.

Mr. HALL. Quite true; but this is being done in furtherance of a public purpose. You have had expressions before you, I presume, from railway executives to the effect that they are not keen about consolidation, but they want to comply with the expressed will of Congress and they are willing to consolidate. The good feature of this bill is that it seems to give them a more workable method of effecting that purpose than the existing statute or some others that have been proposed.

Mr. HUDDLESTON. All taxes hamper activities, but somebody has to pay them. It is a charge on the public in the end and we must assume it. It appears to me that if somebody must suffer, the man making a profit is a pretty suitable individual.

Mr. HALL. That seems not at all unfair. At the same time, all that property is subject to taxation, irrespective of gain, and that taxation has very greatly increased in the last few years.

Mr. HUDDLESTON. The time is very short and I will not ask you about a number of things I have in mind, but there is one particular question I want to ask you about the provision beginning in section 213, page 15, providing for the means whereby the right of eminent domain in minority stock is to be established. That confers upon the Interstate Commerce Commission the duty of acting as a board of appraisers in all cases in which there is a dissenting minority.

Mr. HALL. The commission or a division thereof.

Mr. HUDDLESTON. There is no other means of ascertaining the value of dissenting minority stock except to refer it to the commission as a board of appraisers?

Mr. HALL. There is no other specific means, but there is provision for a petition to the United States district court.

Mr. HUDDLESTON. And it is required that the petition shall be for the appointment by the court of the Interstate Commerce Commission as a board of appraisers?

Mr. HALL. Yes, sir. That is the petition.

Mr. HUDDLESTON. The petition must ask that.

Mr. HALL. But I can conceive of such a petition being made and the court appointing somebody else than the commission.

Mr. HUDDLESTON. I direct your attention to subdivision (4) of that section on page 16.

Mr. HALL. Yes, sir.

Mr. HUDDLESTON (reading):

The United States district courts and the Supreme Court of the District of Columbia are hereby given jurisdiction to hear and determine, by suit in equity,

any petition for condemnation under this section, and to enter appropriate orders of condemnation therein, and it shall be the duty of the commission, or a division thereof, upon any such appointment, to act as a board of appraisers.

The construction I place on that section is that there is no other means for arriving at the valuation of dissenting minority interest except through the Interstate Commerce Commission being appointed as a board of appraisers.

Mr. HALL. I think that is the intention, Mr. Huddleston. I am not satisfied that it is unmistakably expressed, but I think that is the intention.

Mr. HUDDLESTON. What I wanted to ask your opinion about is whether the commission is situated so it can do that. Has it got the time to do it? Is it a suitable kind of work for the commission to be engaged in, sitting as a master in a condemnation proceedings to ascertain the value of securities, the owners of which may live on the Pacific coast or other parts of the United States? I am wondering whether that is an effective and proper means of dealing with that subject.

Mr. HALL. We have urged that this cup shall pass from us. I can see how the information accumulated by the commission, if it were authorized to use it in the way in which it does its work, might be very serviceable.

Mr. HUDDLESTON. Do I understand the commission in its report on this bill has expressed opposition to that section?

Mr. HALL. It has asked to be relieved of that function of acting as a board of appraisers, and it has suggested that if it is not relieved of that function it should be authorized to use its staff and operate as it does under the existing law in arriving at valuation.

Mr. HUDDLESTON. If property of that kind is to be condemned, do you know of any good sound reason why the condemnation proceedings should not be carried on just as the condemnation of any other property, in the same local jurisdiction, the same procedure and machinery, including right of jury trial and other similar machinery?

Mr. HALL. In most of the States, so far as I know, there is no provision for the condemnation of shares of stock. This condemnation that is talked about here is confined to these voting securities. If the project of unification involved or included the building of 40 miles of railroad, I take it that, so far as the acquisition of right of way for that additional 40 miles of railroad is concerned, resort would be had, if needed, to the condemnation laws of the State. But where you are dealing with the condemnation of shares of stock, I think it is safe to say, although I have not examined the statutes of all the States, that in the majority of States there is no provision for it.

Mr. HUDDLESTON. What do you say as to the propriety of requiring an inoffensive stockholder in a line of railroad operating in California, he living there and the railroad chartered by that State, being dragged to Washington to defend his interest in the value of maybe one share of stock?

Mr. HALL. If we can use our machinery under the act, he is not going to be drawn to Washington. Our examiners go all over this country. It has been our policy since the beginning to consult the convenience of parties and witnesses. But if the members of the commission have to serve as masters in chancery in California the day after to-morrow, and a week later in Louisiana or Minnesota, we are going to considerably enhance our traveling bill, and you are going to find a falling off in the output of the commission.

Mr. HUDDLESTON. I had the thought that a nondelegatable duty was being conferred upon the commission and one which they must personally perform. So it seemed to me to involve action on the spot, which, of course, would inevitably be Washington.

Mr. HALL. That does not follow, Mr. Huddleston. If we are to serve as master in chancery in a court in California, I am inclined to think we have got to be there.

Mr. HUDDLESTON. That simply adds another reason for saying that whether you go to the mountain or the mountain comes to you, it is bad either way, and involves a lot of lost motion, and ought not to be.

Mr. HALL. It ought not to be left unclarified. In the report addressed to your chairman by the chairman of our legislative committee we have touched upon these things. In fact, about the only criticism we make of the bill is in regard to the machinery for condemnation. And I assume that a slight change in the wording would take care of our objection, unless it be the objection that we do not want to pass on the plan for consolidation in the first place, and then have to pass on the value of the securities of a non-assenting holder in the second place, if we can avoid it.

Mr. HUDDLESTON. This section involves two or three difficult questions from my point of view. First, has the Federal government power to condemn stocks in a State corporation and deal with it? Second, has it any constitutional authority to condemn that stock for what may be considered to be a private use, not for public use?

Mr. HALL. That seems to be covered by the decision of the Supreme Court construing a Connecticut statute, the citation of which I gave when I last appeared here. The Supreme Court passed upon that.

Mr. HUDDLESTON. They did not pass upon the power of the Federal Government in such matters, but upon the power of the State.

Mr. HALL. They passed upon the question of public use to which you refer, the acquisition of private property by private interests, the New Haven being looked upon as a private investor. I can perhaps refer you to that citation.

Mr. HUDDLESTON. Another question is whether that is a common law proceeding, notwithstanding it is called a proceeding in equity. Another is whether jurisdiction is acquired. All those troubles I see, but I do not see through them.

Mr. HALL. Those things were touched upon in our report addressed to Mr. Parker.

Mr. BURTNESS. I notice in the section to which Mr. Huddleston referred, where it is provided that the courts may appoint the commission as a board of appraisers, it says in paragraph 4:

It shall be the duty of the commission, or a division thereof, upon any such appointment, to act as a board of appraisers.

I was wondering whether that language "or a division thereof" is entirely new language or whether it is defined in other statutes; and if so, what really constitutes a division of the commission.

Mr. HALL. That is provided for in the act itself. Even prior to the amendment of 1920 the commission was authorized to act by divisions. You will find that in section 17 of the act to regulate commerce, as amended August 9, 1917, and later amended February 28, 1920, authorizing the commission to act by divisions. It is authorized to divide its members into as many divisions, each to consist of not less than three members, as it may deem necessary, with express provision in regard to the power of these divisions and the power of review which the commission shall have.

Mr. BURTNESS. Paragraph (2) of section (17) covers it.

Mr. HALL. Yes, sir. Paragraphs (3) and (4) of that section are material in the same connection. I might say the same of paragraph (1).

Mr. BURTNESS. Would the use of those words, in your opinion, contemplate or indicate a legislative intent that the commissioners, either the commission as a whole or a division of the commission, must act as individual commissioners, rather than let the work be done by some of your bureaus?

Mr. HALL. We are fearful that it might receive that construction. We feel that if the words "or division thereof" are retained there they ought to appear above and below in the same bill where it refers to the commission. I do not wish to give the committee the impression that our assistants or subordinates decide things for us, because they do not, but they do the work and get it in shape for us. The neck of the bottle of the commission is always to be found in the men constituting the commission, because the Congress has not delegated to us power which we in turn can delegate to others, and we have to be responsible and see that the work is done.

Mr. BURTNESS. It becomes your decision, regardless of who did the preliminary work.

Mr. HALL. It becomes our decision. We send out examiners and employ engineers and experts to collate the facts and make a record, and we have that record condensed as much as possible in a draft report, so that we get the gist of the whole thing, but the decision lies with the commission, or a division thereof, as provided in section 17 of the act.

Mr. BURTNESS. That question is purely incidental to some of the questions Mr. Huddleston asked, but I want to ask you particularly whether in your opinion consolidation of railroads, as contemplated by this act, the bringing in of small or weak lines upon terms that may be agreed upon with the stronger carriers, and bringing them in presumably at a price or at which securities would be issued that would be lower in the case of the weak lines that have been unable to make a fair return, lower than the physical valuation of the property owned by the carrier, would not probably lead the country to the question of providing another basis on which to fix rates than the basis provided in the present law?

Mr. HALL. That is a very large question, as to what the country may be led to do later in the matter of finding a different basis. The existing basis seems to be the value of the property devoted to the public use at the time it is so devoted, considered as a rate base. That is the way we understand it. The court out in California, in the matter of the San Pedro road, thinks we are wrong, and that is coming up to the Supreme Court and may be thrashed out there in

that case; but as we interpret the statute we are to arrive at the value of the property devoted to public use at the time it is so devoted, considered as a rate base for the purpose of determining what would be a just and reasonable rate, in so far as the question of value enters into the question of rate.

Mr. BURTNESS. Is the amount of return the carrier has been making upon that property one of the elements now considered by the commission in arriving at that value?

Mr. HALL. No; I can not say that it is. That is one of the complaints of the Kansas City Southern, that it is a prosperous and profitable road and we ought to value its property higher than we do because of that element of profit.

Mr. BURTNESS. If you were to adopt that policy, I take it that in the case of a weak carrier which has earned little or no returns you would be forced to the conclusion that its property would be of little or no value, regardless of its original cost?

Mr. HALL. That is true. An illustration of that would be the case of the Atlanta, Birmingham & Atlantic.

Mr. BURTNESS. But when it comes down to the question of two or three or four carriers consolidating, I take it that those business men sitting around a table to effect consolidation would be inclined in fixing the value at which the property of each carrier is to come into the proposed corporation to be intensely interested, and properly so, in the earnings that each carrier has been able to make in the past and the earnings it will likely make in the future; and that in fixing the value and issuing securities the weak line would have to come into that consolidation at a figure much lower than the physical value of the property; and it is possible that the strong line would insist upon its valuation in the merged corporation at a figure higher than its physical value. The question is whether in the fixing of rates we might not have to proceed further and have rates thereafter fixed upon that value which is accepted by these corporations and approved by the Interstate Commerce Commission rather than upon the arbitrary value contemplated by the present law.

Mr. HALL. I do not think it would affect it at all. Under the law as it stands we are supposed to consider for rate-making purposes the value of the properties of the various carriers as a whole or in groups as we may determine them, and as fast as we arrive at the final value of a railroad's carrier property under section 19–A of the valuation act that figure for the purposes of section 15–A is to be taken and used. We have perhaps 20 or 30 or 40 carriers in a group. We ascertain as nearly as may be the value for rate-making purposes. Then we are to initiate or adjust rates so as to yield a fair return upon that collective value. That collective value would not be changed by the carriers going into a combination or unification.

Mr. BURTNESS. No; it is plain that that physical valuation as such would not be changed, but it was emphasized before us in another statement, that in order to effect consolidation it would be necessary for weak roads to come in at a figure which would be fair, and in which the earnings would naturally be one of the important factors. Now, assume that a railroad to-day has property which, under the present valuation for rate-making purposes, might be determined by

the commission to be $100,000,000, to give an arbitrary figure. Yet it may be in a territory where traffic is so poor, and prospects for traffic are so poor, that a strong corporation would not think of consolidating with it, or taking it into a consolidated corporation at a figure higher than half that amount, say, $50,000,000. Now, the amount at which that consolidation is effected would result in some contending at least that this weak carrier would cost the new corporation only $50,000,000, and that therefore, even for the purposes of rate making, they should not expect that rates would be fixed except such as to give a fair return upon the $50,000,000 valuation, rather than upon the $100,000,000 valuation.

Mr. HALL. Undoubtedly that contention will be made, but if it is sound why does it not operate the other way? That is not an accepted or recognized principle of valuation and is not supported, so far as I know, by any authority. I say that with this qualification: Mr. Justice Brandeis urges that the proper basis ought to be the prudent investment. That might in a given case be construed as the cost to the present owner. But the courts have not accepted it yet, the Congress has not accepted it, and the commission has not accepted it. So far as I know, it has not been authoritatively adopted anywhere.

Mr. BURTNESS. And yet Congress could change its policy?

Mr. HALL. Congress could change it, but what would happen if it did? Here is a present owner of property which we will say for rate-making purposes is worth $100,000,000. Another corporation is organized to acquire that property and agrees to pay $200,000,000. They put out stocks and bonds accordingly. Does that property have to be valued at $200,000,000 because the new corporation is paying that for it? That applies just as much as the case of a corporation which pays half of the $100,000,000. You will probably say that in neither case is the figure at which it changes hands determinative, because it does not determine the value for rate-making purposes.

Mr. BURTNESS. The proposition might work out this way: The deductions and the additions from physical value to actual business value for consolidation might probably cancel each other and the amount actually invested by the consolidated corporation would probably represent practically the physical value of the property that went into it.

Mr. HALL. Is it your suggestion that there ought to be something in regard to value incorporated in this bill?

Mr. BURTNESS. Not at all, but I was wondering whether the passage of this bill would necessarily or naturally change the basis of rate making in any way.

Mr. HALL. I do not see how it can change anything from what it is under the existing statute, as found in section 5 of the interstate commerce act, which provides for consolidation. All that is intended here is to limber up the machinery, as I understand it, under section 5, so that consolidation, instead of taking place in only one way, can take place in a number of ways.

Mr. BURTNESS. You told us you did not feel that you were qualified to express an opinion as to the policy laid down in the taxation provision of the bill in section 214. Could I ask you this question:

Would you give us, either now or in your remarks when you revise them, examples of the kinds of taxes, the different types of taxes, which are eliminated by this bill, so we could in our minds pass on the wisdom of the policy of the exemptions covered by the bill? I take it that it is contemplated here that after all, nothing is done except to change the form of the property that is held by the individual or by the corporation, and therefore there is really no profit accruing to the carrier or the individual at all, and that is why it is exempted, but I thought there may be many different types of taxes, and I certainly do not know what the various types of taxes might be.

Mr. HALL. The Treasury Department might look at it in this way: That if a man bought stock for $10 and sold it for $30, even though the property had so changed as to be worth $30, he was making a profit of $20. I do not know whether section 214 includes that class or is confined to that class of profit. Of course, I should be glad to do what I can to aid the committee, but I really do not know much of anything about this tax feature, and I should think the Treasury Department could give you such information very much better than I could.

The CHAIRMAN. We will have a representative of the Treasury Department before the committee.

Mr. HOCH. I want to refer briefly to the matter of the construction of these provisions relative to appraisement. This bill, as I read it, does not constitute the individual commissioners in any sense as appraisers, or clothe them with any of the duties or powers of a master in chancery, but attempts to confer that power solely upon the commission. Is the situation in that regard any different from what we have in the law elsewhere, where it says the commission shall do so and so, and the commission proceeds to use its machinery to do it in its own way?

Mr. HALL. In those cases it does not say that we shall have the powers of an officer of the court, and here it does, and that brings in the element of uncertainty. In the interstate commerce act there is no suggestion that we are applying the power or performing the duties of an officer of the court. It is here contemplated that what we do in the way of appraisement is to be incidental to the functioning of a United States District Court or of the Supreme Court of the District of Columbia.

Mr. HOCH. But the attempt is to give the commission those powers.

Mr. HALL. It says, "the commission," but who is to constitute the commission? It says, "a division," in another place, and the question has been asked as to who constitutes a division. That is what we want to know.

Mr. HOCH. The question you raise is whether the commission as an entity can serve as an officer of the court?

Mr. HALL. Yes; and if so, if that officer of the court happens to disagree within itself as to what conclusion should be reached, one part of that officer thinking the value is so much and another part thinking it is something else, what is going to be the report of that officer? We have the majority rule on the inside of the commission. We have provisions as to what constitutes a quorum, and so on, but

we are not serving as an officer of the court. I think these things can be taken care of by inserting a few words that will make it plain, if it can be made plain, as to how an agency of Congress may become an officer of a court.

Mr. HOCH. Have you suggested or will you suggest the particular phraseology that you think is proper?

Mr. HALL. I would be glad to take it up with your legislative counsel, but I know from experience that your legislative counsel is entirely competent to put in the words that should be there.

Mr. HOCH. I thought it might be helpful to have your suggestion.

Mr. HALL. I shall be very glad to help you all I can.

The CHAIRMAN. Mr. Thom, did you have a suggestion to make?

Mr. THOM. I have an amendment I would like to propose, and will ask the chairman to submit it to Mr. Hall and ask if he has any objections.

The CHAIRMAN. Mr. Thom suggests an amendment to continue paragraph (2) of section 5 in such a way that the commission may dispose of pending applications, so as not to lose the time that has been devoted to those matters. His suggestion is that section 217 be amended to read as follows:

Paragraphs (2), (4), (5), and (6) of section 5 of the interstate commerce act are hereby repealed, except as to proceedings pending under paragraph 2. The commission may, from time to time, for good cause shown, make such orders, supplemental to any order made under paragraph (2) of section 5 prior to its repeal, as the commission may deem necessary or appropriate. Any action taken under paragraph (2) of section 5, prior to its repeal, whether taken by the commission or in pursuance of an order of the commission made prior to its repeal, or after its repeal in a matter pending at the time this act becomes a law, shall, notwithstanding its repeal, have the same effect after the enactment of the railway consolidation act of 1926 as though such act had not been passed.

Mr. HALL. It seems to me to be very desirable that all the effort which has been expended should not be lost. The bill as it stands, as I understand it, provides that if we reach the stage of making an order in such proceedings, we could later supplement the order; but it seems to carry the implication that if we are ready to make the order but have not made it, we are stalled. That does not seem desirable. I feel that the suggested amendment is worth considering. In some way or other, all that is done under paragraph (2) of section 5 up to the stage of the making of the order ought not to be thrown away. I think we all agree upon that.

Mr. LEA. Mr. Commissioner, in fixing rates that apply to these short-line roads under the existing law, what, if any, consideration can the commission give to the cost of transportation to the individual road?

Mr. HALL. It can give consideration to everything put into the record before us, but we are confronted with some difficulties in regard to that question. It may be that we have authority, in the case of an interstate road crossing the boundary between States, doing a local traffic entirely on its own rails, to allow a higher interstate rate than to one generally engaged in interstate traffic. We have in the case of the Orient, in one way or another, authorized the charging of a higher local rate and a diversion of traffic to the Orient, and induced other carriers to forego their right to it in order to keep that road alive. This has helped the situation, and it may become a very useful member of society before we get through with it. In

dealing with such cases we sometimes revise the division of joint rates with other carriers. The rate from A to B may be the same over the lines of several carriers; probably would be under the rate adjustment. By one rate the transportation might be wholly over the rails of one carrier. By another route the traffic would move to some intermediate point over one line and the remainder of the way over another line. While the rates remain the same, we are given authority to fix the divisions as between those carriers where they do not agree. The statute provides that:

In so prescribing and determining the division of joint rates, fares and charges, the commission shall give due consideration, among other things, to the efficiency with which the carriers concerned are operating, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation, and the importance to the public of the transportation services of such carriers, and also whether any particular participating carrier is an originating, intermediate, or delivering line, and any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare or charge.

But that joint rate, fare or charge would probably have to be the same over all these various routes, because if higher over one than over another people would not ship over it.

Mr. LEA. You have the power to help that individual line in that way?

Mr. HALL. We can help it somewhat by a division of joint rates. If the movement is purely local over its line with no competition, it can be authorized to charge more and get it. Of course, it can be so authorized in the other case, but it could not get it.

Mr. LEA. I suppose in the general principle of rate-making you could not accept the theory of cost of transportation?

Mr. HALL. No, sir. We can not take cost as determinative. It is an element to be considered in so far as it can be ascertained, and of late years some progress has been made in studies along those lines But the difficulties are many and the cost of handling, carrying, and delivering a given commodity varies with the circumstances surrounding the transportation, including the volume of traffic. The volume of traffic varies greatly on different roads and at different times.

The CHAIRMAN. The committee will adjourn until to-morrow morning at 10 o'clock.

(Whereupon, at 12.30 p. m., the committee adjourned until Friday, June 11, 1926, at 10 o'clock a. m.)

RAILROAD CONSOLIDATION

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Friday, June 11, 1926.

The committee met at 10 o'clock a. m., Hon. James S. Parker (chairman) presiding.

The CHAIRMAN. The committee will please come to order.

STATEMENT OF ALFRED P. THOM, GENERAL COUNSEL OF THE ASSOCIATION OF RAILWAY EXECUTIVES AND OF THE AMERICAN RAILWAY ASSOCIATION, WASHINGTON, D. C.

Mr. THOM. Mr. Chairman and gentlemen, my name is Alfred P. Thom. I am general counsel of the Association of Railway Executives and of the American Railway Association. I appear here in my capacity as counsel for the Association of Railway Executives.

At a meeting of the executive committee of that association held at Chicago, on October 23, 1925, the following resolution was adopted:

Inasmuch as both the President and Congress have committed the Government to the policy of consolidation of rail carriers engaged in interstate commerce, it is the sense of this association that, if legislation on that subject is to be enacted at the approaching session of Congress, it should provide:

1. For a permissive, as contradistinguished from a compulsory, system, under which two or more carriers may agree upon a consolidation, subject to the approval of the Interstate Commerce Commission, which should be empowered to approve it or to disapprove it, or to permit it only with modifications or on conditions. If the modifications or conditions are found to be impracticable, or the terms on which they can be carried out are found to be unreasonable, the right should be reserved to submit the facts to the commission, which should have power to consider the proposed modifications and conditions anew in the light of the facts, and to modify them, annul them, or prescribe terms on which they may be availed of.

2. For Federal methods and machinery which may be availed of to carry into effect any consolidation which is approved and permitted by the commission.

3. For a report to Congress by the commission, at the expiration of a given term of years, of what has been accomplished at that time in the way of consolidations, and the commission's recommendations, in the light of conditions then existing, of further proceedings.

The general counsel, with the aid and under the advice of the law committee, is instructed to direct his efforts toward making the foregoing principles effective in any legislation that may be enacted.

I should explain to the committee that I am aided in the performance of my duties by what we know as a law committee. That committee consists of about 35 members and all of them are general counsel of the roads that are members of the association.

This committee will, of course, appreciate that in a body of men, perhaps from eighty to a hundred in number, all of whom are executives of these larger roads and who have gained their positions

because they possess qualities of individuality, it is very hard to find an absolute agreement among them as to even the major problems relating to the railroads.

I have no doubt you gentlemen have found sometimes that you differ among yourselves as to questions of policy. I say that because I think it is fair to state to the committee that there is probably some difference of opinion among the railroad executives as to the desirability of consolidation. But my belief is that a very great majority of the executives think that it is a wise policy, if it is made permissive.

You can readily understand that an executive of a road that is not of a type that will be made the stem of some consolidation, but that is doing an important and successful work is apt to feel that the situation is pretty good as it is, where he is concerned, and he sees no reason why there should be machinery for taking him into some other association.

Then there are at the other extreme men charged with large responsibilities, representing very large properties, who are obliged to take more of a national or general view of the situation and who see that there are, from the standpoint of a better service and a better organization, reasons in favor of a permissive system of consolidation.

It is also proper, I think, to call attention to the fact that this policy of consolidation did not originate with the railroad executives. It originated with the gentlemen performing their duties here in Congress, in trying to create a better system of regulation, which finally took form in the transportation act of 1920. At that time those of you who were in Congress realized that there was a very great interest in the question of providing for the weak lines of railroads. The method finally agreed upon and stimulated by the desire to take care of the weak roads was first, the recognition of the group method of rate making, coupled with a percentage of value which should be a measure of the aim which the commission should endeavor to reach in providing revenues, and, deeming that that would mean rates higher than would be made if they had only the strong roads to consider, the conclusion was reached that a certain proportion of the earnings above a given per cent should be taken away from those carriers that earned them.

That method has been defined by the chairman of the Senate committee as an ad interim or makeshift method of dealing with this weak road problem. The ultimate and final method of dealing with it was, in the opinion of those gentlemen, through consolidation.

So that this whole policy which you gentlemen are now considering and which I think Congress has very distinctly adopted, has its genesis in the desire to take care of these roads that are doing a useful service to the public, but are not strong enough to continue that service without some change in method of regulation.

Now, the question has arisen as to whether this is a policy of Congress. In the transportation act, in section 5, provision is made for consolidations. Nothing is there said as to a declaration of a policy. It was not necessary to say that then. A declaration of

policy under that act does not perform the function which a declaration would perform under an act framed in a different manner.

Under that act the commission was directed to make a map of the United States, assigning all the railroads to a consolidated system under rules there laid down for their guidance as to how they should make that system. These rules we find in paragraph 4 of section 5, and they are laid down as follows:

> In the division of such railways into such systems under such plan, competition shall be preserved as fully as possible and wherever practicable the existing routes and channels of trade and commerce shall be maintained. Subject to the foregoing requirements, the several systems shall be so arranged that the cost of transportation as between competitive systems and as related to the values of the properties through which the service is rendered shall be the same, so far as practicable, so that these systems can employ uniform rates in the movement of competitive traffic and under efficient management earn substantially the same rate of return upon the value of their respective railway properties.

The commission had nothing to do except to make a map in conformity to those principles in the transportation act. When we consider that the commission was directed to make a map of all the railroads of the United States—a stupendous undertaking—and that they should do it under rules that would concern the movement of all the traffic of the United States in a way defined in the act itself, and that when that map was made, all the regulations of States or the Federal Government contrary to it should disappear, it is impossible for me to fail to make the inference that Congress thereby adopted consciously a policy in favor of consolidation.

I know that a member of this committee for whom I have the highest respect, Mr. Hoch, feels that perhaps that inference is not controlling. I do not feel that I can concur in that view of it. It seems to me that the inference is overwhelming, when you consider the stupendous task that is laid upon the Interstate Commerce Commission, the cost of it out of the Government's funds, the care with which it is done, and the laying aside of every law of Congress and of every State that interfered with it, that that was a deliberate and conscious declaration of policy of the Congress of the United States in favor of consolidation.

When we link that with the origin of the scheme of consolidation which was to be the final step in the solution of this, what was known as a weak road problem, the inference which I have suggested becomes even stronger.

So that to my mind, I think that this preamble to the resolution in which the policy of Congress in favor of consolidation is referred to as an established policy, is amply justified by what Congress has done.

Now, when we go beyond that (and simply to make the record complete for my purposes, although this has been referred to already by Doctor Duncan), I find and wish to make a part of the record, the following significant references to the matter by the President in three messages, the first in his message of December, 1923, the second in his message of December, 1924, and the third in his message of December, 1925, and I think we will see that the preamble to this resolution in respect to the attitude of the President in regard to the policy of consolidation is also amply justified.

I read from his message of December, 1923, as follows:

> The law for consolidations is not sufficiently effective to be expeditious. Additional legislation is needed, giving authority for voluntary consolidations, both regional and route, and providing government machinery to aid and stimulate such action, always subject to the approval of the Interstate Commerce Commission. * * * Should this permissive consolidation prove ineffective after a limited period, the authority of the Government will have to be directly invoked. Consolidation seems to be the only feasible method for the maintenance of an adequate system of transportation, with an opportunity to so adjust freight rates as to meet such temporary conditions as now prevail in some agricultural sections.

In his message of December, 1924, on this subject he says:

> In my message last year, I emphasized the necessity for further legislation with a view to expediting the consolidation of our railways into larger systems. The principle of Government control of rates and profits now thoroughly embedded in our governmental attitude toward natural monopolies such as the railways, at once eliminates the need of competition by small units as a method of rate adjustment.
>
> Competition must be preserved as a stimulus to service, but this will exist and can be increased under enlarged systems. Consequently, the consolidation of railways into larger units for the purpose of securing substantial values to the public which will come from larger operation, has been the logical conclusion of Congress in its previous enactments and is also supported by the best opinion in the country.
>
> Such consolidation will assure not only a greater element of competition as to service, but it will afford economy in operation, greater stability in railway earnings and more economical financing. It opens large possibilities of better equalization of rates between different classes of traffic so as to relieve undue burdens upon agricultural products and raw materials generally, which are now not possible without ruin to small units owing to the lack of diversity, of traffic. It would also tend to equalize earnings in such fashion as to reduce the importance or section 15–A at which criticism, often misapplied, has been directed.
>
> A smaller number of units would offer less difficulties in labor adjustments and would contribute much to the solution of terminal difficulties. The consolidations need to be carried out with due regard to public interest and to the rights and established life of various communities in our country. It does not seem to me necessary that we endeavor to anticipate any final plan or adhere to any artificial or unchangeable project which will stimulate a fixed number of systems, but rather we ought to approach the problem with such a latitude of action that it can be worked out step by step in accordance with the comprehensive considerations of public interest.
>
> Whether the number of ultimate systems shall be more or less seems to me can only be determined by time and actual experience in the development of such consolidations. Those portions of the present law contemplating consolidations are not sufficiently effective in producing expeditious action and need amplification of the authority of the Interstate Commerce Commission, particularly in affording a period for voluntary proposals to the commission and in supplying Government pressure to secure action after the expiration of such a period.

He makes a shorter reference to the matter in his message of December, 1925, and I will read an extract from that:

> The railroads throughout the country are in a fair state of prosperity. Their service is good and their supply of cars is abundant. Their condition would be improved and the public better served by a system of consolidations. I recommend that the Congress authorize such consolidations under the supervision of the Interstate Commerce Commission, with power to approve or disapprove when proposed parts are excluded or new parts added.

Now, I have read from the act and read from these messages of the President as the basis for the action taken by the railroad executives, in pursuance of which I am now appearing before this committee. Perhaps it might not be without interest to recapitulate the considerations which have probably brought those public men who favor consolidations to that point of view.

The first of these that I will refer to is the weak-lines problem. No one has attempted to sustain the proposition that there is not a problem of sustaining roads which are valuable to the communities they serve and at the same time are hardly, if at all, self-sustaining.

Opinion has crystallized to the effect that if those lines are made parts of larger systems, there will be a solution of the question so far as the roads that are thus made parts of larger systems are concerned. Any plan that is adopted by Congress would, I think, be deficient if it did not have that problem in view.

How far it can be successfully carried out is a matter for the future to determine, but the experience of the railroads so far gives promise of a large advance along that line. I once heard Mr. Henry Walters who is at the head of perhaps one of the most successful lines of railroad in the country, the Atlantic Coast Line, say this: That his line was made up of a large number of small lines, and that if each one of those lines were independently operated, it would hardly be self-sustaining, and yet, thrown into a larger system, it has become one of the greatest earners and one of the most efficient servants of the public in the country.

Mr. HUDDLESTON. Mr. Chairman, may I ask Colonel Thom a question? Do you know what the earnings for the Coast Line for 1925 were?

Mr. THOM. No, sir; I don't remember.

Mr. HUDDLESTON. As I recollect, in 1924, it amounted to 17 per cent on capitalization.

Mr. THOM. I do not carry those figures in my mind. I will see whether Doctor Duncan can find that for you.

Mr. HUDDLESTON. You mentioned the fact of the large earnings, and in that connection I should like to know just what they were.

Doctor DUNCAN. Do you want to know the net railway operating income?

Mr. HUDDLESTON. I wanted to know the percentage on the tentative valuation and also on capitalization.

Doctor DUNCAN. I do not have the figures in that way here.

Mr. THOM. We can get that, if you desire it, Mr. Huddleston.

The reason for that is not far to seek. Of course, the earnings of a railroad are largely affected by the length of haul, and if traffic originating on one of these lines which will become a feeder line is hauled not only to the junction point, but is hauled a long distance toward destination or to destination over the main lines of that road, it becomes a contributor to the earnings, not only to the extent of the service performed up to the junction point, but of its furnishing traffic which is made the subject of the long haul on the main line of the road.

Mr. BURTNESS. Just what is the reason for that? Assuming that the division between the two were fair—that is, the division of the joint rate—just why is that true? I wish that you would amplify that.

Mr. THOM. You can coordinate the collection of traffic in that way. You can always get all the contributions of that feeder to go to that line. Then it does not go to any intermediate line which it may cross. It does not go to some other line, but it all goes to that line and therefore it enjoys all the traffic originating on that line. It is a part of

its own system. Moreover, with the larger transportation capacity of what I have referred to as the feeder lines, incident to their association with strong systems, communities tributary to them are developed and their traffic increases.

So that, looking at it from that point of view, the question of the value of a weak line to a road that undertakes to absorb it, must be considered not only from the situation as it is at the time that the absorption takes place, but of the legitimate prospective value of that line to the absorbing line.

I say that because I want to indicate that there is some inducement to a carrier to take on a line with possibilities. They may be undeveloped possibilities when the two lines are dissociated. They may be capable of development into something useful after the association.

It can not be denied that every proposal for the acquisition for one of these weak lines must be treated from the standpoint of its commercial and financial justification. If it is not justified, there will be no way of securing the acquisition of that line under a voluntary system, and the public is interested even more largely, perhaps, than the railroads themselves, in the terms on which that acquisition is to be made being such as can be commercially justified, for this reason: That the public interest is most largely concerned with the railroads that are doing the business of the country. It is to a lesser extent involved in those railroads which ought to be supported, but on which the real commerce of the country is not dependent.

That being so, the public can not look with indifference at any proposal that would weaken those lines which are now carrying the commerce of the country. Whatever is done in the way of consolidation must strengthen, not weaken, the transportation system and facilities of the country, and in acquiring these lines, no such bargain ought to be permitted, as will have the effect of weakening or the substantial tendency to weaken the facilities on which the commerce of the country is now dependent.

What a catastrophe it would be if the New York Central lines, or the Pennsylvania, or the Santa Fe, should be permitted to make such inconsiderate arrangements with weaker lines that they would have to withdraw a part of their service to the public and render it in a less efficient manner. So that I say that this question of the absorption of the weak lines by the strong must be carried out under a policy that will not weaken, but will strengthen the transportation facilities on which the public is dependent; that unjustified arrangements for taking over the weak lines would be a severer blow at the public if they weaken the roads which are doing the business of the country, than it will be even to the railroads that are injured by the terms of the acquisition, and that in consequence of that, it is of the utmost importance that the natural law of reasonable negotiation and bargaining shall be permitted to take effect in the acquisition of these smaller roads.

The weak roads ought to be paid what their value justifies. They ought not to be paid more than their value justifies. For every cent or every dollar that the strong road pays in excess of what it ought to pay, to that extent it is weakening its capacity to perform a service on which, in reality, the business of the country is dependent.

So that I look forward under a proper permissive act to great progress being made in taking care of this weak line problem. But everybody must realize at the start, it seems to me, and the sooner and more completely it is realized, the better for the success of the transportation systems of the country, that what is done must be justified by the reasonableness and propriety of dealing between man and man on that subject, and that no law of Congress ought to be hoped for that would make an artificial value for one of these railroads to be paid by another railroad, because the road that is to pay it is the most valuable of the two in its service to the public, and the public can not for an instant tolerate the idea of weakening the capacity of that railroad for service.

Another inducing cause, probably, for the conclusion of Congress in respect to consolidation was this: The present method of rate making as it appears upon the face of the statute itself, results, as in the anticipation of Congress it would result, in some shippers having to pay more than they ought to pay in the way of rates if the direct service to them be alone considered.

The act itself says that you can not support this system unless you pay rates higher than would be necessary if you had only the strong lines to consider, which, being interpreted, means that the shippers on the strong lines have rates higher than they would have if the service to them alone were considered. So that in the present system we have a situation in which the shippers on the strong lines are supporting the weak lines. It comes out of their procket. They are paying more than they ought to in order that the weak lines may live.

Well, is that a policy which Congress can permanently indorse? It all might be very well for those gentlemen who do not appreciate, perhaps, the consequences of unjust or inconsiderate treatment to a road that happens to be strong, if that road were to pay it, but where does that road get the money which is to be recaptured and which is levied in order to take care of the weak lines? The statute says that you get it from having rates higher on the strong roads than are justified in order that the weak lines may live.

When you come to an analysis of that situation, it means that the present system is working out so that the shippers on the strong lines are overcharged in order to support the weak lines, and that the fund which you are relying on to support the weak lines is taken by an overcharge from the shippers on the strong.

I have no doubt that that consideration had something to do with the idea which seems to have taken hold of the mind of Congress, that that ought not to be a permanent situation, but that some other solution of this weak line problem should be sought and the solution; which they have adopted is consolidation, taking in the weak lines by the strong on some justified basis, and then making your rates to the shippers what they ought to be—not higher than they ought to be.

In other words, according to this concept when rate making is done with reference to the needs of all the roads in a group, it is impossible to make that rate on the merits of the rate as related to the service, but it is made for an ulterior and artificial purpose, and that is to do something more with it—take care of the weak lines that furnish none of this service that the shipper and the strong line paid for, on the theory that the shipper on the strong line—and it has been so

declared by the Supreme Court of the United States—has an interest in a complete system of transportation and therefore it is not unjust to charge him something for the support of the roads the services of which he does not enjoy.

Another consideration which I have no doubt was potential with Congress in arriving at this conclusion is this——

Mr. GARBER (interposing). What conclusion do you refer to there that Congress has arrived at?

Mr. THOM. In favor of the policy of consolidation.

Mr. GARBER. Has Congress spoken on that question yet?

Mr. THOM. I think so. Perhaps you were not here, Judge, when I treated that subject quite fully in the opening part of my remarks. I shall be glad to do it over again when the time for questions comes.

Mr. GARBER. I understand that under the present law voluntary consolidation is provided for, with the approval of the commission, but compulsory consolidation to the extent provided for in this bill has not as yet been passed upon, has it?

Mr. THOM. There is no compulsion under this bill or under the existing law.

Mr. GARBER. It is not compulsion, but it facilitates consolidation, does it not?

Mr. THOM. Oh, yes; it facilitates it.

Mr. GARBER. More than under the present law?

Mr. THOM. Yes; but it does not compel it.

I was saying that another of the considerations which I assume was potential with Congress in arriving at this conclusion in favor of consolidations——

Mr. SHALLENBERGER (interposing). Will it interrupt you to ask you this question? You indicated from the last of the President's messages, I believe, that if this matter was not brought about voluntarily, there might come a time when Congress would in some way bring it about by other means. Isn't that implied in the President's message?

Mr. THOM. It is.

Mr. SHALLENBERGER. Do you think it is possible under our Constitution to compel two systems to consolidate?

Mr. THOM. That is a very difficult question. I do not think it can be done by private means, Governor.

I mean by that Congress can not compel the use of private means for that purpose. Congress can, of course, provide the means for doing it, and can do it, but I do not think it can compel the investment of private means to do it.

I was saying, Mr. Chairman and gentlemen, that another one of the suggestions which probably operated in favor of this system, in the mind of Congress, is this:

That the result of consolidation would be the creation of a system of transportation of greater dependability, efficiency, adequacy, and capacity. The moment that you associate a road of lesser capacity with a road with capacity to carry it you improve the service. The road that takes it over must operate it and has the means to operate it in a better way than the road that did not have the means to do that, and it becomes a part of the system with capacity enough to develop it and to make it render a real service, to improve its equipment, to improve its roadbed and its rails, to furnish a prompter

and a more adequate service; and it becomes a better machine associated therefore with the road having the capacity to develop it than it will be if left alone, with inadequate means to perform the service.

It has been held by the Supreme Court of the United States that a railroad can be required to perform a service such as that between a point on the Atlantic Coast Line and Raleigh, N. C., to run trains more frequently than that particular service will pay for if, from all their service, they can obtain the revenues that are required to escape the line of confiscation.

So that Congress, doubtless, had in mind if these roads are associated into an efficient and self-sustaining system, that there will be created an agency of greater usefulness in the way of performing the public service.

Then another one of the considerations which doubtless was potential with Congress, I have already adverted to to a certain extent, and that is that it will permit a system of rate making which is more scientific, fraught with fewer injustices, and more stimulating to the carriers. If rates are made with reference to the service instead of with reference to sustaining some weak lines, you are able to make a rate from which there shall no longer be a need of recapture. Whatever such a system, where there are no weak lines to be sustained, can earn from reasonable rates, rates that are not made higher because of the weak line problem, but rather made just for the service, you can have a system of rates that will enable the carrier to enjoy what it earns, and have all the fruits of its enterprise, of its economies, and of its efficiency.

But there is another consideration from the standpoint of rate-making in regard to this matter of consolidation which is very potential, doubtless, in the minds of the gentlemen who favor this system. The members of this committee may recall that Secretary Hoover at one time advocated a revision of the rate structure of the country with the idea of taking the burden off of the traffic which could bear it least and putting it on traffic which could bear it better. He made the illustration between farm products and first-class traffic such as merchandise. Now, he says, "take it off of the farm products and put it on the merchandise." The question at once arose what roads' traffic will it be taken off and what roads' traffic will it be put on? Will that road be the same? Does the road that carries the agricultural products enjoy enough of this other traffic of merchandise to sustain the burden? Will you not under such a system be taking from the road that is carrying agricultural products and giving to some other road in an industrial community the advantage of the increased rates on industrial products.

So there was your problem. You were taking off a part of the revenues of the road carrying the agricultural products, and while ostensibly putting it on some other traffic, you find in practice that the road which has enjoyed that other traffic is not the one whose revenues are reduced from agricultural sources, but you are making the industrial road have the benefit of the increase and you are making the agricultural road bear the burden of the reduction without compensation from other traffic. Suppose those roads are thrown together in such a way as to make a very much greater diversity of traffic, so that when you do readjust your rates and take them off of

one commodity you can put them on another carried by the same road. As you increase the size of those systems, as you put them together wisely, you get into a region where you can apply that principle better and to a larger extent than you can where one road is dependent upon one class of traffic to a preponderant degree and when you can not relieve that traffic because you can not supply revenue that you take away by putting on some other traffic that that road carries.

In that same connection there is another thing that ought to be very distinctly considered. Let us look at this present theory of divisions between two roads, the needy road and the strong road. The present law says that you make that division with regard to the needs of the two roads, not with regard to the service alone, but with regard to the needs. No matter how much you may attempt to conceal that, that means baldly, taking from the road that earns and giving to the road that does not, taking from the road that is performing service and giving to the road that does not perform the service, not making the divsion proportionate to the service rendered by each, but you make your divisions in accordance with the financial needs of the two roads.

Mr. SHALLENBERGER. Where is that in the law now?

Mr. THOM. Where is it?

Mr. SHALLENBERGER. Yes.

Mr. THOM. I will read it to you. You will find in section 15, paragraph 6, of the interstate commerce act, the following direction to the Interstate Commerce Commission, on page 43, Mr. Shallenberger, as follows:

> In so prescribing and determining the divisions of joint rates, fares, and charges the commission shall give due consideration, among other things, to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation, and the importance to the public of the transportation services of such carriers and also whether any particular participating carrier is an originating, intermediate, or delivering line, and any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare or charge.

In other words, the revenue needs of the two carriers must be considered by the commission in making this division of rates.

Mr. SHALLENBERGER. And not on the service rendered.

Mr. THOM. Not based on the service at all.

Mr. MAPES. You say that with no limitation. They give consideration to not only the needs but also the service.

Mr. THOM. I meant to say that is one of the considerations.

Mr. SHALLENBERGER. It is not entirely service rendered.

Mr. THOM. It is not dependent on the test alone of the service rendered. That is the contention made by a number of these roads. Take the New England division case, the New England roads came in and said, "We need more money and we ought to be sustained, we are performing an essential service to the public, and we want more out of this joint rate," and they were given it and it was sustained by the Supreme Court on that ground. Now, whatever may be the justification for such a policy, in order to sustain a transportation system, I think everybody will agree that it is a bad principle, and it ought to be abandoned as soon as a better method can be found. It is not wholesome and it is un-American; it is not the way we conduct our own business. We get paid for what we do, all of us, and if somebody else gets paid for what we do, we think they are doing us an injustice. So that is evidently a method devised for an artificial purpose, and if a method can be devised to get away from the necessity for that, doubtless, Congress thought it was a desirable thing to do.

I have adverted to another consideration which, perhaps, I might approach here as well, and that is to the recapture provision. I think one member of the committee the other day referred to the fact that if any shipper overpaid for the service he got, the amount of the overpayment belonged to him, not to the Government of the United States. I have never been able to come to any other conclusion than that. I have never seen by what title the Government of the United States could take from the shipper more than it ought to have, than he ought to pay for his service, and just put it in the Treasury. If that shipper overpays he is the man to whom it should be refunded, if you take it from the carrier, but not the Government of the United States, and not another line of railroad.

Mr. HUDDLESTON. If this money were taken for a gift, we might say, to a weaker carrier, it might be said that it was for the purpose of sustaining the general transportation system, but the fact is it is taken and put in the Treasury and belongs to the Government of the United States, and the only advantage that the weaker line ever can get from it under the law is in the form of a loan which must be amply secured and repaid with interest.

Mr. THOM. That is true.

Mr. SHALLENBERGER. Would you not say it would be legal now for the United States to say that we can do the very thing we are here discussing, the Supreme Court having sustained the provision in question?

Mr. THOM. I am speaking of it from the standpoint of policy, not from the standpoint of the legality of it. While I stood before this committee and tried to persuade them against the justice of that provision at the time it was enacted, I was unsuccessful then, and the Supreme Court has since sustained the power, but I do not think it is easy for us to see the justice of it.

Mr. MERRITT. As a matter of history, I think you will remember that you were successful before this committee and this committee reported out a bill to that effect.

Mr. THOM. We did succeed so far as this committee was concerned, but that was put in over in the Senate.

Mr. RAYBURN. In the bill that we were considering before this committee when we had hearings, was there such a provision in that? I do not think so. I think the whole origin of 15–A, with reference to the recapture, was over in the Senate committee or in the conference committee.

Mr. THOM. It was in the Senate committee, but we discussed it here. I have a printed pamphlet of my argument before this committee at the time, in which that was discussed, and I suppose it was discussed because it was a matter being advocated before this committee. The committee did not put it in.

Mr. RAYBURN. The bill that passed this House, which came out of this committee, had quite a different rule of rate making than involved in 15–A?

Mr. THOM. But that was discussed here as to whether that ought to be in the bill, and I printed some arguments on the question, both on the constitutional features of it and on the policy of it. Now, I have never been able to see, and I am discussing it now not from the standpoint of the established law, because, as the Governor says, the Supreme Court has sustained it, and we have to accept it, but from the standpoint of policy—what title, in justice and right, has the Government of the United States to the money of the shipper on the Santa Fe Railroad that has been made to pay more to the Santa Fe Railroad than he ought to pay? Where does the Government get the title to that, or what is the moral basis for the Government's title? If the shipper overpays more than he ought to pay, under every other circumstance that is covered by this law, he can recover it back as an overcharge. Where is the difference between the right of that shipper who has overpaid and the governmental right to the amount of his overpayment? Is not his title just as complete in morals as it would be if he were overcharged by the carrier for some other or unjustified reason?

Mr. HUDDLESTON. Has Congress the power to authorize the carrier to exact an extortionate charge?

Mr. THOM. No, sir; I do not think so, but here is the point there.

Mr. HUDDLESTON. I do not mean whether the carrier could do it, as a matter of contract between himself and the shipper, but can Congress by law fix it so that the carrier must take from the shipper an unreasonably large charge?

Mr. THOM. I think that is depriving the shipper of his property without due process of law.

Mr. MAPES. Would not your argument carried to its last analysis prevent the passage of legislation which would take into consideration the transportation systems of the country as a whole?

Mr. THOM. No.

Mr. MAPES. And require the repeal of the present provision authorizing the fixing of the rates with that in view?

Mr. THOM. I do not think so.

We had a plan before you gentlemen for dealing with that question that dealt with it very differently and I think better, but I never could get other people to think so, and that took into consideration the sustaining of the railroads as a whole.

Mr. MAPES. If you allow the shippers to ship over the strong and best situated roads for only what the cost of the service is to those roads, how are you going to take care of the weaker ones?

Mr. THOM. You are going to make your rates reasonable for the service. In order to explain this situation, we must bear this in mind. There is no such thing as a single reasonable rate. There is, as declared by the Supreme Court, speaking through Justice Brandeis, a zone of reasonable rates between the lower level and the higher level, a great many rates, each of which is reasonable. Now, what is directed by the transportation act as it stands now is that you will pick out of that zone, the commission will pick out of that zone of

reasonable rates a rate which it thinks is reasonable, but must do that with an idea of sustaining the weak roads, but still the rate that it picks out must be picked out, or it comes out of that zone of reasonableness. A method which would deal with that situation which would be entirely constitutional, and which I think would be effective, would be to consider as the commission has always considered, all the railroads in a rate-making group, and pick out of that zone of reasonableness, not a rate with reference to the strongest or with reference to the weakest, but with reference to the average condition in the group, and that rate would, it seemed to me, be a proper compensation for the service rendered, no more and no less, and that is the theory that I advocated at the direction of the Association of Railway Executives at the time the transportation act was enacted. I have a copy of that bill that we presented to Congress right here with me now with the rate-making provisions in it such as I have described. But that is no longer of consequence.

Mr. RAYBURN. With the law we had for rate making before 15–A passed, was there anything to prevent the Interstate Commerce Commission from doing that?

Mr. THOM. No, there was not.

Mr. RAYBURN. With the present law and 15–A repealed, and going back to the law as it was before the transportation act of 1920 was passed, they could do that very thing.

Mr. THOM. They could do that but they were not doing it.

Mr. RAYBURN. They could do it.

Mr. THOM. Yes. It may be of some interest to you for me to read briefly what was proposed at that time.

Mr. RAYBURN. I believe that plan was adopted in the committee and defeated in the House.

The CHAIRMAN. It was defeated on the floor. I have a distinct recollection of it.

Mr. RAYBURN. What was known as the Esch bill was put in its stead.

Mr. THOM. Here is the provision we advocated before this committee:

> The Interstate Commerce Commission shall divide the continental United States into as many rate-making groups as it may deem proper and convenient in view of the similarity of transportation and traffic conditions applicable thereto.
>
> The level of rates, fares and charges in any rate-making group shall from time to time be adjusted so as to provide revenue sufficient to pay the wages of labor and all other expenses of operation including taxes, a fair return on the value of the property held for or used in the public service, and to establish and maintain a credit sufficient to attract the new capital necessary to meet the public need for present and reasonably prospective transportation facilities and service. In applying the foregoing rule a comprehensive view of the conditions of each rate-making group shall be taken, and the level of rates, fares, and charges shall be determined with reasonable reference to railroads fairly representative of average conditions therein.

Mr. RAYBURN. I remember that some of us did not quite agree with all of that declaration about securing the level of rates. Now, do you think it would be better for the railroads as a whole, for the companies, and easier for the Interstate Commerce Commission, to repeal 15–A and go back to the law we had before that?

Mr. THOM. No; I do not think so now. I think the country has adjusted itself to it, and although I did not approve of it in advance, I think it would be quite a blow to railroad credit to do that.

Mr. RAYBURN. Don't you think there is too much rigidity in 15–A, with reference to the rate-making section?

Mr. THOM. My hope would be that if you had this consolidation measure so that the consolidations can take place, you would be able to deal with it in a less rigid way. That is my conception of it.

Mr. RAYBURN. And if we had a sane consolidation plan either in course of completion or completed, then it might be possible to repeal the recapture provision in order that the income of the better circumstanced roads may be spread over the deficit of the worse circumstanced roads, and in that way there might be some probability of a little crumb to the men who pay the bills.

Mr. THOM. That is just what I was about to refer to when I started to interrupt you. I was going to add the idea that it seems to me that in the process of readjusting your rate on a basis having reference to the service and free from the compulsion of the weak line problem, that you would be able to so adjust it that the complaint would be minimized of some shippers being overcharged in order to sustain this thing, and you might so spread your revenue over a system that you can find relief which can not be hoped for under present conditions.

Mr. RAYBURN. In other words, instead of having some railroads that are so rich that their income is so great that it is unconscionable and the Government is recapturing half of the excess over a certain amount, that then you might have systems of railroads taking in practically all of the railroads in the territory that were reasonably prosperous, and, therefore, they could live at a reasonable rate?

Mr. THOM. That was what I would be hoping.

Mr. RAYBURN. That is what I have been hoping, but I got very little comfort out of Judge Lovett and Commissioner Hall and everybody else who has spoken. Of course, I have not gone off on this wild dream that you see in the magazines about these tremendous economies, but I have always thought if we could tune down this, there would, at least, be some economies and some relief, but no witness who has come here yet has even indicated that he thought there might be any.

Mr. THOM. I do not so interpret the evidence given by Judge Lovett. I will come to that question in a moment. My hope would be that when the rates are made with reference to the service instead of under the compulsion of the weak line problem, that the revenue, if there is any substantial amount subject to recapture, might be so marshaled that instead of the recapture being taken and given to the Government it might be taken and given to the shippers in the way of a better adjustment of rates. I have that distinct hope.

Mr. RAYBURN. Part of it.

Mr. THOM. Of course, men may differ in respect to what would be the results, the effect of this.

Mr. RAYBURN. You have always been candid with this committee and that is why I like to hear you. My information is that there is this with the average railway executive of this country, that he is so afraid that there might be some undue slashing of rates that

he will never admit that there ought to be any, that it is possible to bring about any. I am not asking that as a question, but make it as a statement for the record, and I believe that the testimony we have had from the average railway executive before this committee will bear that out.

Mr. THOM. I do not think that comports with the record that they have made. Since this transportation act was passed they have voluntarily made several reductions as the consequence of direct action by the executives, and I will say here, perhaps, it can not be repeated too often, that since the transportation rates were raised in Ex Parte 74, just after the transportation act was passed, that if the traffic of the country had been carried at the rates then fixed, instead of at the reduced rates afterwards put into effect, the shippers would have paid over $2,300,000,000 more than they did actually pay.

Mr. RAYBURN. Yes, and that comes about through an unscientific setting of rates, and in Ex Parte 74, or whatever it is, there was a horizontal increase and not well considered increases, and in the unscrambling of that thing, of course, some rates were proven to be excessively high. In the general 30 per cent raise, it had the effect of raising the rates more than 30 per cent. But those are the things that have been ironed out.

Mr. THOM. And a part of that reduction was put in voluntarily by the executives. Other parts have been due to reductions which have been made in the regular and orderly way, but the result is that the shipping public have paid $2,300,000,000 less for the traffic which was carried, for the service which they received, than they would have if that service had been rendered at the old rates. Whatever may be the consequences of that, that is the fact.

Mr. HOCH. Do you mean the rates established in Ex Parte 74—you refer to them as the old rates?

Mr. THOM. Yes.

Mr. RAYBURN. The rates established in Ex Parte 74 were the result of jumping out of one situation into another, and when we did not know where we were going, and it just proved the unreasonableness and how unscientific it is to horizontally raise a great mass of rates without taking into consideration what effect each specific rate will have upon transportation.

Mr. THOM. I do not think you will find that the reductions have been simply from that cause. Some of them have been, but there have been others in addition to that that were not simply ironing out a situation such as you referred to.

Mr. RAYBURN. I realize that the men who run the railroads when they get up against what they conceive to be a thoroughly unjust situation do yield more than they would have to yield otherwise. I am not impugning any motives. Everybody in this country we expect to look out for their own business, and they are looking out for theirs. We are supposed to look after theirs and other folks', too.

Mr. THOM. As I say, I do not think the idea that the executives are going to hold on to rates simply because they are afraid not to is justified by the record. There was an example in the 10 per cent horizontal decrease on agricultural products voluntarily put in since Ex parte 74.

Mr. RAYBURN. A great many times that is a wise thing to do, even from the standpoint of revenue, because when they get to a certain point it is like the tariff, traffic will not move.

Mr. HUDDLESTON. I was going to suggest this: While I want to give the executives credit for everything they are entitled to, it seems pretty obvious that some of these concessions were made to public sentiment, and perhaps to prevent a fight on the system.

Mr. THOM. You can not complain of men surrendering to public sentiment.

Mr. HUDDLESTON. Not in the least, but I do not give him credit for generosity—good sense.

Mr. THOM. We are not here talking about generosity; we are talking about the ordinary methods of a man performing his duty, whatever it is.

Mr. MERRITT. Like everybody else, merchants and business men generally, selling at a fair price.

Mr. LEA. What period of time do you refer to in which that $2,300,000,000 saving to the shippers was made?

Mr. THOM. Since 1921.

Mr. LEA. Up to the present time?

Mr. THOM. Up to the beginning of this year.

Mr. CROSSER. I will ask you one question. After all, is not the essence of what is proposed here, the essence of the difference in this consolidation scheme that is being advocated, over this recapture business, simply the difference between leaving to private owners the determination of what they think is the best way of handling freight over weak lines and strong lines, so-called, joining them up to suit themselves, as differentiated from letting the commission, say you shall pay into the hands of the Government so much money of whatever you earn in excess of a certain amount and we will give that to the weak lines to keep them going? Is not that substantially the difference?

Mr. THOM. It does not appear so to my mind. I do not think that is so.

Mr. CROSSER. I would like to have you explain why it is not.

Mr. THOM. In the first place, it is not intended to make consolidations according to the wishes of the railroads without power to the commission to disapprove or to attach conditions.

Mr. CROSSER. They proposed it; it is essentially theirs.

Mr. THOM. They proposed it, but before it comes out of the hopper it may differ from what they put into the hopper, because the Interstate Commerce Commission can—according to every contention I have ever heard made—they can attach conditions that make consolidation a very different thing from that proposed.

Mr. CROSSER. Certainly.

Mr. THOM. Everybody—railroad men—make mistakes.

Mr. CROSSER. They initiate it realizing a great deal what is going to happen. They contemplate having their own way about it, otherwise they would not be so keen about the passage of this bill. I do not mean that offensively.

Mr. THOM. You heard Mr. Hall say yesterday that he did not know any executive that was very keen about the passage of this bill.

Mr. CROSSER. The majority seem to be for it.

Mr. THOM. As I have said, I am not authorized to appear here as an advocate of a policy; I am directed to assume that that is the policy of Congress, to try to get a voluntary system. I am simply recapitulating in answer to questions asked here on the first day by Mr. Huddleston, certain considerations, as I understand them, for whatever weight they have, not as coming from me, but to call them to the attention of the committee to consider.

Mr. CROSSER. You understand what I am saying is not from a hostile attitude.

Mr. THOM. Yes.

Mr. CROSSER. I am wondering whether the effect of what is proposed here is simply to give the railroads a chance to formulate such combinations of railroads as they seem to think are proper, and to spend their money, so to speak, in maintaining the weak tag-ends that they put on to the main lines, instead of having to turn it over to the Government to be redistributed in such ways as the Government sees fit.

Mr. THOM. I think if you make sensible consolidations that the result will be to furnish an object lesson to Congress so that they may deal with the recapture as they see fit, and then it will be up to Congress to say how they will deal with it. They can deal with it or not as they see fit, but they will put you in a position where you would have lost the compulsion of the weak lines problem.

Mr. BURTNESS. I was wondering how long it would take for consolidation to be effected, in your opinion, in such a way that the recapture clause could be eliminated, assuming that the same policy would be followed?

Mr. THOM. I think it would be a slow process. I think it will proceed substantially and generally, and it might be possible for you to deal with the recapture clause as to a completed system as it is completed. That would be for Congress to determine.

Mr. HUDDLESTON. Since you have referred to the subject and state that the executives were not pressing for the passage of this bill, who does want the bill to pass, so far as you know?

Mr. THOM. I think that, as we are going to have consolidation, that the majority of the executives want a bill of this nature.

Mr. HUDDLESTON. If we are going to have it at all.

Mr. THOM. If we are going to have it at all, and I think that although the policy of consolidation did not originate with them, that ever since it was put on the statute books, that they have been busy trying to make arrangements to see where they would come out and many of them are anxious to have the opportunity now of consummating their purposes.

Mr. HUDDLESTON. Do you think there is any public demand for legislation on the subject?

Mr. THOM. I do not know what you would think of the Republican platform in the last presidential election.

Mr. HUDDLESTON. I think very little of it, but I may say in that connection that I do not think very much of any political platforms.

Mr. THOM. As to whether or not there is any public sentiment, when the President is elected by a good many millions majority on a platform that had this in it:

The consolidation of railroads, subject to approval of the Interstate Commerce Commission, into fewer competitive systems will result in advantages to the public—

That may be indicative. You gentlemen know better than I do whether there is a demand for it; you touch the public at more points than I.

Mr. HUDDLESTON. I will say this, that no one from any place representing any interest whatsoever has brought the matter to my attention.

Mr. RAYBURN. Is not this true, that we already have it? The law is already on the statute books, passed by Congress, the representatives of the people. This just extends some of those provisions; it is not a repeal.

Mr. HUDDLESTON. Who wants the change?

Mr. RAYBURN. The commission says it is practically impossible to administer the law as it is.

Mr. BURTNESS. Do we not have a law on the statute books to-day under which it is absolutely impossible to effect any real consolidation? Of course, partial consolidation can be effected by subterfuge, by proceeding under the provisions of paragraph 2 of section 5, but consolidation as such can not be brought about at all because the Interstate Commerce Commission has not completed its map or plan under which consolidations may be perfected, and I presume, does not intend to do so and probably can not do so.

Mr. THOM. I think that is the case.

Mr. BURTNESS. I do not feel we have a consolidation statute on the books at all except as the transportation act may have shown that Congress adopted eventual consolidation as a policy.

Mr. HUDDLESTON. I believe it would be very enlightening to the committee if you would tell us why consolidation can not be effected under the law as it now stands.

Mr. THOM. Because under the law as it now stands, it can only be done pursuant to a plan adopted by the Interstate Commerce Commission, dividing the whole continental United States into systems of railroads. They have not done that, and the law says that you shall not consolidate until they have done it.

Mr. HUDDLESTON. Why can not that be done?

Mr. THOM. The work is too stupendous, and after you did it you would not have anything that would be practicable, because consolidation can not be mashed down on the country by a rigid mold, but must be accomplished as the evolution of business management and financial arrangements. It will not take a theoretical form.

Mr. HUDDLESTON. I have analyzed hastily section 5 of the interstate commerce act. Subsection 1 authorizes joint agreements among carriers. Subsection 2 authorizes the control of another carrier by lease or purchase of stock, and those two sections are not subject to the qualification that they must be in accordance with the general plan. The adoption of the general plan by the Interstate Commerce Commission is provided for by subsection 4, and subsection 6 provides that carriers may consolidate into a single corporation subject to the qualification (a), that the consolidation is in harmony with the general plan, and (b), that bonds issued by the new corporation must not exceed the value of the property.

So far as I understand section 5, it does not prohibit one carrier from buying all of the property of another carrier and operating the road ad lib., and it does not prohibit one carrier from controlling another through a lease of its system or a purchase of its stock. It is only the consolidations which are effectuated by merging into a single corporation that must be in accordance with the general plan authorized by subsection 4. If I am mistaken in the law I would like to know it.

Mr. THOM. I think you made a reference to paragraph 1 of section 5 as authorizing agreements between carriers.

Mr. HUDDLESTON. Yes.

Mr. THOM. There is a limitation on what those agreements may refer to. They do not relate to consolidation at all.

Mr. HUDDLESTON. Joint rates and other matters of that kind.

Mr. THOM. That is pooling rates, etc.; that is not consolidation. You did not mean to refer to that as part of the consolidation plan.

Mr. HUDDLESTON. Not necessarily. That is as I read section 5.

Mr. THOM. I was going to point out that I do not think so. In the second place, I understood you to say——

Mr. HUDDLESTON (interposing). Before you proceed, the proviso of subsection 1 is as follows:

> That whenever the commission is of opinion, after hearing, etc., that the division of their traffic or earnings, to the extent indicated by the commission, will be in the interest of better service to the public, or economy in operation, and will not unduly restrain competition, the commission shall have authority by order to approve and authorize, if assented to by all the carriers involved, such division of traffic or earnings, etc.

Mr. THOM. That has relation merely to division of earnings and pooling of revenue.

Mr. HUDDLESTON. It is revenue, management, and joint operation.

Mr. THOM. Only as to division of earnings, not dominion of one company over another road. It is pooling of traffic and earnings, that is all.

Mr. HUDDLESTON. It is in the nature of consolidation.

Mr. THOM. In my own interpretation that has nothing to do with the question of consolidation. I was about to say that I understood you to say there was nothing in this act that would prevent one carrier from buying the property of another.

Mr. HUDDLESTON. Nothing in the law as it now stands.

Mr. THOM. I understand there is something in the law as it now stands. In other words, that would be a consolidation as defined in paragraph 6 of that act.

Mr. HUDDLESTON. Section 2 provides as follows:

> Whenever the commission is of opinion, after hearing, etc., that the acquisition, to the extent indicated by the commission, by one of such carriers of the control of any other such carrier or carriers either under a lease or by the purchase of stock or in any other manner not involving the consolidation of such carriers into a single system for ownership and operation, will be in the public interest, the commission shall have authority by order to approve and authorize such acquisition, etc.

Mr. THOM. My opinion is that what you have read excludes the case where one carrier gets the property of another carrier by ownership. That is consolidation as defined in this act. Paragraph 2 of section 5 relates only to leases and control that do not amount to consolidation.

Mr. HUDDLESTON. But they may lease.

Mr. THOM. They may lease. They may control by stock ownership, under anthority of the commission, but that is not consolidation, and some people feel that that ought not to be construed as broadly as the commission has construed it in the Nickel Plate case because there it is made practicable to substitute a method of consolidations similar to that directly dealt with in the act, and that many people think was not the purpose of the act. Paragraph (2) of section 5 provides an ad interim method of authorizing leases and control which does not amount to consolidation.

Mr. HUDDLESTON. The limit of consolidation by subsection 2 is that it shall not involve consolidation of such carriers into a single system for ownership and operation.

Mr. THOM. Exactly.

Mr. HUDDLESTON. To that limit the consolidation may go forward.

Mr. THOM. To that limit the control may go forward. whatever you choose to call it. That is what the law calls it. The control may go forward. But that is not the thing that is desired as a practical method, and more than that, there is no machinery prescribed there for carrying that into effect. Some people think that that machinery is prescribed by the authorization of the thing to be completed under the Federal law, and that machinery and authority must be implied from that, but other people do not think that; there is that doubt about it.

Mr. BURTNESS. Is there not another limitation in paragraph 2 in this, that it really limits the acquisition to either leasing or the purchase of stock, and it occurs to me that there is no way under this section or any other provision that I have been able to find in the act, which would permit one carrier to actually purchase the property of any other carrier at all.

Mr. THOM. That is just what I said to Mr. Huddleston, that I think these consolidations are prohibited by the act until the plan is made.

Mr. BURTNESS. It not only prohibits making a new corporation as such, but it seems to me that it absolutely prohibits any one corporation from acquiring the property of another corporation, although it may go out and get stock in another corporation if it does not get ownership?

Mr. THOM. I agree with that view. That is my answer to Mr. Huddleston.

Mr. HUDDLESTON. The point I was chiefly calling attention to was the fact that the requirement that consolidation must be in harmony with the general plan is applicable only to subsection 6, which contemplates the consolidation into one corporation for the ownership, management, and operation of the property.

Mr. THOM. In other words, it applies to the whole consolidation as defined in the act. It does not apply to control or leases but does apply to consolidation in toto as defined in the act.

Mr. HUDDLESTON. To come back to that question, of course, we are giving a rather technical definition to consolidation, because the same economies and the same advantages which might be derived from the merger into a single corporation might come about under stock ownership or some other means.

Mr. THOM. That is the view that some of the applicants have entertained in respect to the matter and still they do not arrive at consolidation.

Now, another consideration that I would like to advert to is this, and I think this is a most important consideration, if there is one lesson taught by the evolution of the public need in respect to transportation, it is that the public looks upon the transportation system, whatever part that the public wants to use, as a single unit. To a shipper or a producer in California, for example, it means access to any of the markets of the world he wishes to use. He is not only interested—that shipper is not only interested—in the road in California that originates his traffic—they may be ever so good—but he is interested in the road that carries his traffic forward beyond the lines of the originating carrier and delivers it at the market where he wants it to go.

He is looking upon that service as a unit so far as he is concerned, and the needs of the public have come to demand a coordinated railroad service throughout the country. What do we find? We find that the railroads that perform the service of these shippers now—perhaps, over 100 first-class roads—have each one of them a different control, each one of them having at the head a man of strong individuality who has his own views and is looking at his own environment. Shippers need a coordinated policy of transportation. They need a method of having the transportation facilities of the country thrown together in such a way as to respond to their need for a unit in rendering the service. Now, when you have 100 men of different views and different individuality and different views of policy, and ask them to agree upon a policy, you have quite a great problem. If you could reduce the number of men that control the policies to 12 or 15 and have men of the broad outlook that would probably be selected to head those systems, you would very largely affect the problem which is very close to the public of realizing a coordinated and harmonious policy in the management of these facilities, in all of which every shipper everywhere is interested.

I call your attention to one illustration of that. I do not know any concern that seems to meet the public needs in a more considerate and better way than the telephone company does. They do not have to go to 100 men when they want a policy. One man does that, and he can take a nation-wide view of the questions, of the policies the people want and that are best for the service. That is an extreme view. You can never get that in railroads unless they are all in one system and that is not conceivable, but the difficulty of getting a broad policy and of getting a harmonious policy and one that will take in a broad range of subjects and a vast number of interests, is greatly diminished as you diminish the number of men who are responsible for the policy.

This brings up two matters for discussion. When you form one of these large organizations, of course, you will have new problems of management to meet. It is essential that some way shall be found to make the actual operation of the railroad as local as possible. The men that perform the service must be near to the people for whom they perform it. They must be conversant with

their needs. They must not be a power removed far away where the public that wants to communicate with them will find difficulty of access. A method, therefore, will have to be adopted in case of these consolidations, of concentrating policy and decentralizing management. A way will have to be devised by which responsible management shall be near to the traffic producers and the users of transportation, and that way will be devised, I am sure, by practical men who have this problem in view. You will want, perhaps, the man responsible for the policy of the road, to be the chairman of the company. For purposes of illustration, there may be, for purposes of operation, presidents of different units in the consolidated systems in various parts of the country, near to the people whom they serve. Illustrations of that are everywhere now. Take the Southern Pacific. Until the death of Mr. Kruttschnitt, the policy of the Southern Pacific road was a matter which he was at the head of and he lived remote from the operations of that property, but there was the president of a unit in San Francisco, and there was the president of the Texas lines in Texas. In the Nickel Plate proposition there was to be a single body in charge of policy, but Mr. Harahan was to remain over the Chesapeake & Ohio, Mr. Alfred was to remain over the Pere Marquette, Mr. Underwood in charge of the Erie, and Mr. Bernet was to remain in charge of the Nickel Plate itself.

Now, all those things show a consciousness on the part of the people dealing with this problem that it has got to be solved in such a way that the policy shall be harmonious and shall be nation-wide, but the management must be localized and as illustrating the extent to which that is receiving attention, I will refer to this from an article written by Mr. Walker D. Hines, in the Harvard Business Review of July, 1923, as follows:

> The creation of such a large consolidated system would call for new methods of organization which would promote the public interest. Along with centralization in all matters of policy affecting the consolidated system, there should be a process of radical decentralization so as to create on different parts of the consolidated system distinct units of management, each of which would be virtually autonomous, except in matters of general policy. The consolidation, instead of making the management more remote from the employees and the public, should evolve methods to create closer contacts in those respects.
>
> We should not visualize the organization of a great consolidated company as merely an enlargement of the organization of one of the existing companies, with the direction of practically all important matters of operation from a single headquarters. On the contrary, we must be prepared for some new concepts adapted to new conditions. We must remember that the last word has not been said about the method of railroad organizations. It is seriously questionable whether, even on existing systems, it is wise to concentrate management into a single central office as much as is frequently done. In this connection it is suggestive to mention the reorganization of the Pennsylvania system in 1920 into four separate operating regions for the avowed purpose of accomplishing a salutary decentralization.
>
> When the so-called "Harriman system" was in existence, consisting of the Union Pacific and Southern Pacific lines, there were four or five separate operating corporations in different parts of the territoty covered by the system, each corporation with its own president, and thus a degree of decentralization was accomplished, while general policies were controlled from a central office. There is no reason why a large consolidated system formed pursuant to the transportation act should not have four of five different regional organizations, each in charge of an officer endowed with as much power as is now enjoyed by many railroad presidents and each of such officers might be designated as president for the region in question. Such an officer should, through his own staff, keep in touch both with the employees and with the public in his region, and it is reasonable to believe that such an organization could establish closer contacts with and greater responsiveness to the needs of the public and of employees than exist at present. Indeed, it may not be unreasonable to anticipate that there may develop in each of such regions conference boards with both public and labor representation, and that through these conference boards there may come about a decidedly improved mutual understanding in local matters, and consequently in general matters.

The CHAIRMAN. Will you be able to come back at 10 o'clock on Tuesday morning?

Mr. THOM. Yes.

The CHAIRMAN. The committee stands adjourned until that time.

(Thereupon, at 12.05 o'clock p. m., the committee adjourned to meet again at 10 o'clock a. m., Tuesday, June 15, 1926.)

RAILROAD CONSOLIDATION

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Tuesday, June 15, 1926.

The committee met at 10 o'clock a. m., Hon. James S. Parker (chairman) presiding.

The CHAIRMAN. The committee will please come to order.

STATEMENT OF ALFRED P. THOM—Continued

Mr. THOM. Mr. Chairman and gentlemen, on Friday I was referring to the necessity, from a public standpoint, for a coordinated and harmonious policy of transportation, and called attention to the fact that it would be much easier to secure this where the policy is to be agreed upon and determined by 12 or 15 men, than where it is necessary to secure the concurrent action of 80 or 100 or more men.

I will not personally enlarge more upon that point, but I should like to put into the record for the use of the committee the result of the consideration given to it by a very careful and capable student of transportation, Mr. Walker D. Hines. What I am reading is another extract from the article that was published in the Harvard Business Review over his signature in 1923. Referring to this point, he says:

> One advantage of consolidation is little stressed but is of great importance. The railroads are engaged in public service. Their success is peculiarly subject to public sentiment and also to the sentiment of the employees. Public sentiment and the sentiment of the employees are greatly influenced by the policies of railroad managements. In many respects railroad policies have to be uniform for the whole country. For example, the policy as to the rules concerning the return of freight cars, and, what is even more important, the policy as to whether those rules will be enforced, must be a virtually uniform policy for the entire country. Such railroad policies have to be adopted by practically unanimous consent of the railroad executives of the country. At present there are perhaps 80 or 90 separate and independent class 1 railroad systems. Anything approaching unanimity among such a large number of executives is difficult of attainment, and it is much easier to secure acquiescence in a negative or stand-pat policy than in a policy involving adjustment to changing conditions. The result is that too frequently the general policies of railroads are halting or negative, not because the majority of railroad executives for the great systems of the country hold to that position, but because the large number of railroad executives and the great variety of the extent of their interests make it so difficult to secure the necessary concurrence in new and affirmative policies. This situation reacts unfavorably upon the interests of the railroads themselves, and in the last analysis upon the public interest in adequate railroad transportation.
>
> There is frequent criticism that the railroads show too little initiative and progress in their general policies. It is sometimes claimed this is due solely to hampering legislation. It is in fact due largely to the difficulty of agreeing upon the initiation of progressive policies, which results from there being such a large number of different railroad systems, with such extraordinary divergence in size and degree of public contact. A very important improvement in this matter

has a vital relation to the public support necessary to preserve private operation would result if, for example, there were 12 great railroad systems instead of 80 or 90 different interests, as at present (to say nothing of several hundred Class II and Class III railroads).

The creation of very larger railroad systems will simplify the dealing of railroads with each other, because such a method of consolidation will relagate to the internal councils of some one system great numbers of questions which now come up for consideration in the general councils of the railroads. The handling of questions still remaining of general interest will be greatly simplified by the reduction in the number of companies to be consulted. For instance, the due equalization of the interchange of freight cars among 12 large systems will be far simpler than when 80 or 90 different systems are involved. Indeed, with only 12 systems to deal with, there will probably come about coordinated methods not only of car distribution but of car maintenance which will prove far superior to anything which can be hoped for with 80 or 90 different railroad companies to be consulted in the general councils on the subject; and likewise the stituation will admit of very great improvement in controlling the movement of traffic in times of heavy business, so as to avoid embargoes, or at least so as to make them much more rare, and, when resorted to, far more useful.

Another important advantage to arise from larger consolidations will be the simplification of public regulation. Surely the Interstate Commerce Commission could deal more satisfactorily with 12 systems than with 80 or 90. It is not unreasonable to anticipate that with such a small number of systems the commission would find it feasible and desirable to establish branch regional offices which could deal promptly and effectively with many regional matters which now have to be dealt with at Washington. Similar advantages in the public supervision of labor problems could reasonably be expected.

It is believed that with appropriate decentralization within each consolidated corporation, so as to secure sufficiently intensive and responsive local management, the weight of public convenience and of the interest of stockholders and employees will be found to be on the side of the creation of a few very large systems.

I will not dwell upon that point more at length. I invite the intelligent consideration of the matter on the part of the committee. I pass now to a subject——

Mr. SHALLENBERGER (interposing). Would it interrupt you to offer just one explanation at this point? You used the word "decentralization" in the management of these railroads. How do you argue that consolidation into a small number of large systems would not work rather to centralization than decentralization? How would you make the two fit in together?

Mr. THOM. I referred to that, Governor, when I was before the committee on Friday, and discussed the question from the standpoint of the necessity of having the policy determined by a few people, but the actual operation of the roads relegated to regions in the system with responsible managements over each region, so that that management could come into contact with its public and could be readily accessible to its public.

I illustrated that by what was proposed in regard to this Nickel Plate matter. There was a plan by which the policy of the consolidated Nickel Plate properties would be determined by one authority. But one of the factors in that consolidation was the Chesapeake & Ohio. It was the plan to leave the management of the Chesapeake & Ohio where it was, with Mr. Harahan still as president of that property and still as operating man, able to determine operating problems himself right there on the ground; and so with the others, the Erie and the Pere Marquette, etc. That has been found so necessary that, even as it is, the Pennsylvania Railroad, about a year and a half or two years ago, adopted the plan of establishing four

operating divisions with a responsible operating officer at the head of each one of them.

So, Mr. Hines, in the quotation which I read to the committee, dwells on that, and he says that it is necessary, in bringing these roads into large systems, to find a way of decentralizing the operations, and it will be done by localized management.

Mr. SHALLENBERGER. I think that experience has taught those of us in the West that that centralizes instead of decentralizes; that one of the things we complained of since the inauguration of all power here in Washington was that it was far removed from us and that we can not get to the person having authority to give us any relief. Your plan would contemplate that that which affects the locality would be dealt with by a local board?

Mr. THOM. By localized authority.

Mr. SHALLENBERGER. And you do not think that consolidation would tend to destroy that?

Mr. THOM. I think that it would tend to promote it, because it would bring out the necessity for that very thing.

Governor, before I get through, if I have the time, I wanted to discuss a suggestion about decentralizing the Interstate Commerce Commission itself and bringing that closer to the people.

Mr. COOPER. Colonel Thom, I wanted to ask you one short question. Do you agree with Mr. Hines that under the consolidation plan which he mentions it would make the work of the Interstate Commerce Commission much easier?

Mr. THOM. I do agree with that. I will not dwell longer on that aspect of this matter unless it is desired.

I pass on now to the last one of the considerations which I desire to discuss as bearing upon the desirability of the policy of consolidation.

Mr. COOPER. Before you go to that: You believe the Interstate Commerce Commission is overworked to-day by reason of having such a broad field in which to work? That is, do you think that they have a little more than they can properly take care of?

Mr. THOM. I should say so, Mr. Chairman.

Mr. COOPER. You say there are about 90 different systems.

Mr. THOM. About 175 different class 1 railroads; but it is estimated roughly that they are operated by 80 or 90 different authorities.

I have no doubt that it will have a most beneficial effect, from the public viewpoint, in making the work of regulation easier, and I believe if you gentlemen will bear with me when I get to that part of my remarks and will consider a proposal which I wish to bring to your attention of a method of decentralizing the work of this commission, and carrying justice to the homes of the people rather than having the people come to Washington for it, you will be doing one of the largest public services that I can imagine.

I should like to have an opportunity of bringing that matter to your consideration. I have gone into the details of such a plan as that, and I think that sooner or later this committee will be confronted with the necessity of dealing with that aspect of this question.

The remaining point that I wish to discuss in connection with whether or not consolidations are in the interest of the public, and which I purposely left for the last, so as not to unduly emphasize it, is that of economies.

I say that I want to avoid the charge of unduly emphasizing that element in the discussion for this reason; that any one who discusses this matter from a railroad standpoint must be careful to protect himself against what may be hereafter found roseate and unjustified expectations in respect to that matter.

There would be, for example, comparatively little saving in the matter of labor, and by labor I refer to the whole personnel.

This matter that I have referred to in answer to Governor Shallenberger: If we decentralize managements and have managements nearer to the people they serve, you will see that there is not much chance for a reduction in personnel.

But, laying that aside, there are economies in my belief, of a very substantial nature which may be reasonably anticipated. I will illustrate that.

Mr. Bernet, who is president of the Nickel Plate, testified on that subject before the Interstate Commerce Commission in the recent hearings in respect to that proposed consoldiation and he estimated the economies to arise from the proposal at about six and a half million dollars a year for that system.

There are certain unifications of roads which have already taken place. I refer particularly to what has been going on in the New York Central Lines, where a few years ago they took in a number of lines that they previously controlled.

Mr. Harris was testifying in regard to that matter before the Senate committee at its recent hearings on consolidation bills. Mr. Harris is the financial vice president of the New York Central Lines. He was the man who had in charge this matter of consolidations or combinations of the New York Central Lines to which I have referred. He conducted them through to a successful end and he was testifying in respect to that matter before the Senate committee. He said:

From 1907 to 1920 I was general counsel of the New York Central, and during that time a part of my work in that connection was with the consolidation of the lines which the New York Central took over. Some of those consolidations were important. They involved a large amount of money and were rather complicated.

The New York Central has been in process of consolidating with the different properties within its system and its contiguous territory for a great many years. The first important consolidation, I think, that I had to do with was when the New York Central & Hudson River Railroad took over the Rome, Watertown & Ogdensburg Railroad.

After that was done—and included in that were a number of other companies—in 1914 the New York Central & Hudson River Railroad consolidated with the Lake Shore & Michigan Southern Railway, and I had to do with that.

The chairman then asked the question:

Did you have to do with the Big Four?

Mr. HARRIS. Yes; that is the one I am about to speak of. There were earlier consolidations that I did not have to do with, but subsequent to the major consolidation by which the line between New York and Chicago, which was formerly broken at Buffalo, was put together, we consolidated certain of our Michigan Central properties by having the Michigan Central take over into its own corporate ownership and control some of the individual lines which theretofore had been independent. And the Big Four took over its subsidiaries, or such of them as we could take over under the laws existing at that time, and under the circumstances affecting the several properties.

So that the New York Central system has been fairly well compacted, except that it still is broken up into subsidiaries which eventually will be brought together, I expect, but their consolidation has been delayed because of conditions which you know of under the transportation act and the antitrust act.

At the time of the Lake Shore consolidation it was not thought advisable to consolidate with the Michigan Central, because of the claim that it was a competing line. The same way with the Big Four. Certain of its lines might have been said to be competitive with the New York Central, and so it was not taken in. As it is now, the New York Central owns 95 per cent of the stock of the Michigan Central; it owns over 90 per cent of the stock of the Big Four, and so on. The oustanding interests are negligible in percentages, although substantial in amount.

The CHAIRMAN. Let me ask you generally whether or not the New York Central consolidations—you have had very intimate knowledge of all of them—have resulted in more efficient operation and in more economic administration.

Mr. HARRIS. I think undoubtedly that those that I have spoken of have resulted in economies. I know they have.

There are some aspects in the operation of railroads through which economies may be expected. For example, here are two lines of railroad that are now competing between common points, with lines of different lengths, the haul being different on the two lines. The shorter the haul, the less expensive it is. But the railroad with the long haul now wants some of the business and it will take all that it can and carry it around by the circuitous route, at a larger cost, of course, than the road with a direct haul would incur.

Suppose that both of those lines were owned by the same road. All that traffic could go by the short line and there would be the saving in expense of the longer haul.

In addition to that, there are questions of congestion of properties. Every congestion means expense, and congestions frequently occur where there is limited capacity for handling the traffic. If there were larger capabilities for handling the traffic, those capabilities could be marshalled in such a way that this congestion could, in many cases, be avoided and the incidental expense of the congestion thereby reduced.

Mr. BURTNESS. Your illustrations now, Colonel, largely relate to consolidations of competing lines, and most of the proponents say that such are not contemplated by the bill.

Mr. THOM. There will be competing lines consolidated necessarily.

Mr. BURTNESS. Oh, some, of course.

Mr. THOM. But I am speaking of such competing lines as are brought together in a system, and I am saying that there is a source of economy.

There is another source of economies that is manifest to any one. There would be saving in the matter of terminals. They could in some cases be consolidated. There would be economies in the consolidation of soliciting offices, where one office could do for a system instead of there being half a dozen competing offices.

There would be savings in connection with interline accounting. Where traffic moves over many systems, the accounting incident to that is very much greater than where there are few breaks in the handling of traffic.

There would be economies in the matter of shops, concentrating shops at points which could handle successfully the equipment of many lines where there had to be many shops for different lines.

99790—26——25

Then in the matter of equipment itself: Without enlarging that list, I would like also to put into this record Mr. Hines's conclusions in this same article on that subject. He says:

> Discussion of consolidation frequently assumes that those who believe in consolidation count upon great economies growing out of the elimination of executive officers and their staffs. It is not believed that any such sort of economy is relied upon to an important extent, and this for two reasons: First, any such economy would be a negligible percentage of operative expenses, so that significant economies must be found in entirely different directions; and second, it is highly probable, as above suggested, that the new organization of the consolidated system, with the necessary separate regions qualified to act with substantial autonomy, will call for approximately as much executive organization as at present.
>
> The real economies which will come from consoliation will be far more important in scope and significance. The elimination of switching, the standardization of materials, the concentration of purchases, the sending of traffic by shorter routes, the elimination of interline accounting, the greater ability to utilize shops and equipment on all parts of the system to the maximum extent, all constitute real and important elements of economy. Perhaps one of the most important matters from the standpoints of economy and of improved service will be the fact that freight cars of the system will be "at home" on all parts of it so that they can be put at the public service without limitation, and so when in need of repair they can be fully repaired where they are, instead of being sent back to the home lines, with possible necessity for various minor repairs away from home to be later discarded or duplicated on the home line.
>
> In viewing this matter we must realize that the connection between each two railroad companies represents in a sense a frontier between two powers which are foreign to each other. Generally speaking, locomotive and passenger cars do not go beyond that frontier. Freight cars in general do cross the frontier but when they do so there are generally additional inspection and switching involving cost and delay, and there must be elaborate interline accounting. Under existing conditions, when a freight car leaves the tracks of its owner and crosses one of these frontiers, it becomes a foreign car and, indeed, a friendless car. All presumptions are likely to be decided against it in favor of what appear to be the interests of the foreign line on which it finds itself. If it needs repairs, it is uncertain whether it will receive them, unless they are of such a character essential to the safety of its operation, and they may have to be discarded or done over when the car gets home. Whether it is moved in accordance with the car service rules prescribed by the American Railway Association, so as to be returned promptly to the owning carrier, depends upon a great many contingencies, with every question likely to be resolved in favor of the foreign interest which temporarily controls it.
>
> These considerations emphasize that to a very important extent the public interest will be prompted and efficiency and economy in the use of the railroads and their equipment will be increased by diminishing as far as may be reasonably practicable the number of these frontiers, or, in other words, by putting the railroads into a few large consolidated systems.

Without going more at length into the considerations which probably induced Congress to adopt a policy of consolidations, it seems, as I have stated, certain that it has done so. It did this more than six years ago and yet practically no progress has yet been made in carrying this policy into effect.

This was not due to obstacles thrown in the way by the railroads. It was due to the system adopted in not being a workable system.

It has been found impossible by the commission to make a map by which the consolidations were to be effected. Consideration has developed that even if it had been possible, the map would have been an obstacle to consolidations instead of an aid. It would have been an artificial and impracticable method of dealing with a very practical business problem.

It is impossible to mash these railroad systems into a rigid mold necessarily made on theoretical principles.

Consolidations are a matter of business and managerial evolution, not a condition that can be superimposed by law.

Finances have to be provided; a great number of property owners consulted and brought into agreement; diverse interests reconciled—all matters requiring initiation, management, and planning by the parties to be affected.

Moreover, as has been heretofore adverted to, the assignment of undesirable properties by a fixed plan to a special group by act of the Government would create visionary and impossible conceptions of value and that in itself would be an obstacle instead of an aid to consolidations.

I would like also to call attention to the fact that if there is to be a voluntary system, the creation of a map by the commission would be a decided obstacle from this standpoint: After the commission has made its plan, giving years of work and consideration to it, naturally their minds would not be open to consideration on its merits, to the extent it otherwise would, of a new suggestion which would throw the map into the discard, and that in itself would put the commission in a reluctant attitude of mind toward the consideration of any new suggestion that the parties themselves might work out and bring forward, and which should be considered on its merits, without prejudice or preconceptions.

But the work which has been done on this matter, the survey that the commission has made of the country and of its transportation facilities, has been by no means wasted. It has developed a fund of information which will enable the commission to take a comprehensive view of the question and consider any proposal that is brought before it from such a comprehensive viewpoint.

My consideration leads me to the conclusion that the only chance of consolidations actually taking place, unless the Government is to finance the proposals, is to adopt a voluntary system under which the parties shall originate the proposals, provide the means for carrying them into effect, and be given the corporate power to consummate the arrangement, if it is approved by the commission as being in the public interest.

The present law is absolutely defective in this machinery. If we had the plan, we would have to stop before carrying it into effect, because of the lack of legal machinery to consummate it.

Mr. HOCH. Colonel Thom, if it will not interrupt your line of discussion, are you familiar with the legislative history of this provision for the general plan? No statement has been made at this hearing as to who the proponents of it were. Everybody, apparently, has repudiated it now, but I was wondering who was responsible for it.

Mr. THOM. I am not familiar with it, Mr. Hoch, but my impression is that it was the result of a conference between the two Houses on the subject.

Mr. HOCH. Was it in either the House or the Senate bills?

Mr. THOM. Not in the shape it is now, my information is, and I think this was the result of the conference. But that information is entirely secondhand, and I have no direct knowledge on the subject.

The lack of machinery had better be illustrated. The only machinery that now exists is, of course, the machinery under State laws. Suppose that a plan is brought forward which requires relief

from the antitrust laws to consummate it and you find a State that has general machinery for consolidation, but in the constitution perhaps, or in the statutes, of that State will be found a prohibition upon consolidating paralleling and competing lines.

The question at once arises whether or not you can take a State's machinery to accomplish consolidation which consolidation is prohibited by the laws of that very State.

In other words, when you go to the machinery of the State in order to make a consolidation, there is a serious legal question whether you can utilize that machinery, except with the limitations put upon it by the State itself.

So that will illustrate the difficulties of proceeding in this matter where relief from the antitrust acts has become necessary.

Mr. HOCH. That same difficulty is involved in this proposal, is it not?

Mr. THOM. What?

Mr. HOCH. That same difficulty is involved in this proposal, that same question—is it not?

Mr. THOM. I do not think so. I do not know that I catch your view, but——

Mr. HOCH. Utilizing State machinery without accepting the limitations of the States.

Mr. THOM. There is nothing in this proposal about State machinery.

Mr. HOCH. The proposition virtually gives to these State corporations a status of Federal corporations, and the effect of this is to set aside any State law or even any consitutional provision of the State that might interfere with what you set out to do.

Mr. THOM. I think that you and I are discussing different ideas. I am trying to bring out, Mr. Hoch, that if the Federal law stands as it is now, without any machinery, the only place to find the machinery is in the State law, and the question of whether from a legal standpoint that is available is a law question that I have described.

That is not the same law question, though, as the one that would arise under the proposal here, because here is Federal machinery that is created, and you can resort to that Federal machinery, and the limitations of the State laws do not apply to the Federal machinery.

Mr. HOCH. I thought that the same question would be involved, because you propose here to keep these same State corporations chartered by the State.

Mr. THOM. I do not think that that question arises. I have a discussion of the law questions which I am going to enter upon in a little while, with reference to those matters.

Mr. HOCH. Then I would not care to anticipate it.

Mr. THOM. Without going at any more length into the considerations already adverted to, it seems that if Congress considers consolidation desirable from a public standpoint, its views can be best carried out by a voluntary system, and it is essential to create the legal machinery for carrying it into effect.

This brings me to the consideration of the pending bill, and my nterpretation of that bill is that it is based upon this view.

The pending bill, as I read it, may be divided into four parts: First, definitions; second, there is the declaration of policy, third, there is the establishment of machinery to carry consolidations into effect when approved by the Interstate Commerce Commission; and fourth, there is a requirement that at the end of a given period the Interstate Commerce Commission shall report to Congress the progress that has been made with the recommendations of the commission to Congress as to further procedure.

I should like, at this point, first to advert to the necessity and to the function of this or some declaration of policy.

In the present law that matter was dealt with in this way: The commission was required to make a map and the principles that were to guide the commission in making that map were set out in the law in paragraph 4 of section 5.

There was the commission's charter of authority. Now, under this bill, there is to be no map. There must be somewhere laid down the lines which Congress thinks should be followed in respect to the approval or disapproval by the commission of any proposal. The office of this declaration of policy, as I read the bill, is to lay down the principles which are to govern the commission in approving or disapproving a proposal which is brought before it.

If there were none in the bill, but there was simply a power conferred upon the commission to approve or disapprove proposals for consolidation, without any test or limitation whatever upon it, the important legal question would arise whether or not that would amount to an invalid delegation of legislative power.

So that in any bill that Congress adopts, the necessity for laying down in some way the rules of a general nature which are to be the chart and the guide of the commission in passing upon proposals which come before it must be, it seems to me, recognized.

So, that, as I understand it, is the function of this declaration of policy.

Mr. HUDDLESTON. I wanted to ask just on that point whether to require that consolidation shall be found to be in the public interest is also included in that declaration.

Mr. THOM. That is one of the things, but then the question comes back, What further does Congress wish to say as to what is in the public interest? What further definition does it choose to give?

It might be possible in law to sustain a declaration such as you have referred to, but of course it is desirable to have something a little more of a guide than such a general suggestion as that.

Mr. HUDDLESTON. Of course, the requirements with reference to weak lines, etc., as found in this section, are exceedingly general.

Mr. THOM. I know they are. They are obliged to be general. The same with rates. The Interstate Commerce Commission is directed to see that rates shall be reasonable.

Mr. HUDDLESTON. I wondered whether from a purely legal aspect, in avoiding the delegation of a nondelegable duty, the other would not answer the purpose just the same.

Mr. THOM. It might do so, just as you require that rates shall be reasonable, but at the same time, if that is so, it would not be as certainly true as if you added to it features of greater definiteness.

Passing to the machinery. Generally speaking, the character of the machinery necessary and the character of machinery in this bill

and in the Senate bill involves the conferring by Congress upon a State corporation of certain additional powers. There are two methods by which this might be accomplished. I mean there are two methods by which consolidation might be accomplished.

One is the one adopted in this bill which utilizes State corporations. The other is by a system of Federal incorporation and making all the consolidated companies which are the result of complying with this bill Federal corporations.

There are two schools of thought on that subject. Some people resent very much the idea of making all railroad companies creatures of the Federal Government. Other people do not find that difficulty but we all know that there is substantial objection on behalf of representatives of some of the States to Federal incorporation.

As I say, this bill does not adopt that course, but adopts a course of utilizing the State agencies already in existence for the purpose and confers upon them the necessary authority to carry that purpose into effect.

That brings me to a discussion of the law questions involved. I now call the attention of the committee, with its permission, to the authority of Congress to confer power to consolidate upon State corporations engaged in interstate commerce.

The question now arises whether Congress can, under the Constitution, confer upon railroad corporations, chartered by a State and authorized by the State to engage in, and actually engaged in, interstate commerce, power to consolidate or merge with one another, when the State charter confers no such power, or when such consolidation or merger is contrary to the policy of the State, in respect to parallel or competing lines or otherwise, as reflected in the statutes or Constitution of the State.

Those who deny this power to Congress rely on expressions found in the cases, such as the following—and this is from the case Mr. Huddleston read from the other day, 161 U. S., 702, Louisville & Nashville Railroad *v.* Kentucky:

> In the division of authority with respect to interstate railways Congress reserves to itself the superior right to control their commerce and forbid interference therewith; while to the States remains the power to create and to regulate the instruments of such commerce, so far as necessary to the conservation of the public interests.
>
> If it be assumed that the States have no right to forbid the consolidation of competing lines, because the whole subject is within the control of Congress, it would necessarily follow that Congress would have the power to authorize such consolidation in defiance of State legislation—a proposition which only needs to be stated to demonstrate its unsoundness.

Or:

> It does not call for argument that railroad companies are incorporated to perform a public service, and that it is for the State to define their powers and to control their exercise of such powers. (L. & N. Railroad *v.* Kentucky, 183 U. S. 512.)

Before proceeding to discuss affirmatively the main question above stated, brief comment should be made on these cases.

The first of them (namely, that in 161 U. S.) was a case in which the Louisville & Nashville Railroad Co. undertook to acquire the control of and to operate certain other lines of railroad, alleged to be parallel and competing with its own lines, contrary to the constitution and laws of Kentucky, which forbade the consolidation or acquisition of parallel or competing lines.

Congress had not acted on the subject, and the validity of such action by Congress was not, and could not be, involved in the case. What the Supreme Court said, as set forth in the above quotations, was said merely by way of argument and was clearly obiter dictum, which, by universal concession, does not amount to judicial authority.

Indeed, part of what is there said by the court by way of argument—namely, that "the power to create and regulate the instruments of interstate commerce, so far as necessary to the conservation of the public interests, remains with the States"—is directly contrary to the repeated decisions of the Supreme Court itself, upholding the power of Congress to create and regulate such instrumentalities. (McCulloch *v.* Maryland, 4 Wheat. 316, 411, 422; Osborne *v.* Bank of United States, 9 Wheat. 738, 861, 873; Pacific Railroad Removal cases, 115 U. S. 1, 18; California *v.* Pacific Railroad, 127 U. S. 1, 39; Luxton *v.* North River Bridge Co., 153 U. S. 529; Wilson *v.* Shaw, 204 U. S. 34; Wisconsin Railroad Commission *v.* C. B. & Q. R. R. Co., 257 U. S. 590.)

And the remainder of what is there said by the court by way of argument—namely, that it would follow from the assumption mentioned "that Congress would have the power to authorize such consolidation in defiance of State legislation, a proposition which only needs to be stated to demonstrate its unsoundness"—is said by the court in apparent forgetfulness that one of the important railroads of the country, the Union Pacific, is the direct product of legislation by Congress bestowing upon a State corporation the power to consolidate, and that consolidation was challenged by the State of Kansas, the State afterwards abandoning its contention, as is hereinafter more fully shown.

The second of the cases from which quotation has been made supra (namely, that in 183 U. S.), involved the question of the validity of the statute and constitution of Kentucky in their relation to intrastate traffic, forbidding a charge, or the receipt, of greater compensation for the shorter than for the longer haul under certain conditions. No statute of Congress was involved nor any attempted exercise by Congress of a power to define the powers, or to control their exercise, of a railroad company incorporated by a State. Here, as in the case in 161 U. S., what was said by the Supreme Court was merely a loose expression, used arguendo, and was clearly obiter dictum only. It furnishes no authority whatever. Indeed, the supreme authority of Congress over railroad corporations chartered by a State, in respect to their relative charges for the long and for the short haul in interstate commerce, has been so repeatedly exercised and so universally upheld by the Supreme Court that no citation of authority is necessary to sustain the legal proposition.

These cases forcibly illustrate the danger of relying on loose expressions of a court, used in argument, and on points not involved in the case.

Reverting now to the main question: So far as my examination of the authorities extends and so far as I am aware, no case can be found in the Supreme Court which, in the decision of the points involved, is adverse to the contention that it is within the constitutional authority of Congress to confer upon railroad corporations, chartered by a State and authorized by the State to engage in, and

actually engaged in, interstate commerce, power to consolidate or merge with one another, when the State charter confers no such power and even where such consolidation or merger is contrary to the policy of the State as expressed in its statutes or constitution.

The constitutional power of Congress to enact such legislation may be sustained under several separate clauses of the Constitution, but, as its power under the commerce clause is ample, the discussion here will be confined to its power to regulate interstate and foreign commerce.

THE COMMERCE POWER

The commerce power, standing alone, is adequate to support such legislation by Congress.

The power of Congress to regulate interstate and foreign commerce is without limit, except the limit imposed by the fifth amendment to the Federal Constitution, which requires due process of law and forbids the taking of private property for public use without just compensation.

While this proposition of law is so well recognized as to require no citation of authority to establish it, for convenience the following cases may be cited: Gibbons *v.* Ogden, 9 Wheat. 1, 196, 197; Northern Securities Co. *v.* United States, 193 U. S. 335–6; Minnesota Rate Case, 230 U. S. 399, 411; Houston & Texas Railway Co. *v.* United States, 234 U. S. 351; American Express Co. *v.* Caldwell, 244 U. S. 625; Illinois Central Railroad Co. *v.* Public Utilities Commission, 245 U. S. 506; Hammer *v.* Dagenhart, 247 U. S. 269; Wisconsin Rate Case, 257 U. S. 590.

In Gibbons *v.* Odgen, Chief Justice Marshall uses this language, which has never been departed from or questioned:

> The sovereignty of Congress, though limited to specific objects, is plenary as to those objects.
>
> The power over commerce with foreign nations and among the several States is vested in Congress as absolutely as it would be in a single government having in its constitution the same restrictions on the exercise of the power as are found in the Constitution of the United States.

See also Lottery Case, 188 U. S. 353.

In view of the extent and dominant character of the commerce power, and if provision for consolidation of carriers engaged in interstate commerce is a legitimate exercise of the power of regulation, the question would appear not to admit of further debate. Under such circumstances the conclusion would be inevitable that Congress has the power to confer upon the instrumentalities of interstate commerce authority to conform to its requirements as to the regulations it lawfully prescribes.

On this point I am basing the discussion upon this proposition, that if consolidation is a valid exercise of the power of Congress to regulate, then it knows no limit except the fifth amendment. It can do everything that is necessary to carry out that policy. The whole question then comes back to whether consolidation, a policy of consolidation, is a proper exercise by Congress of the power to regulate interstate commerce. If it is, that is an end to the question. If it is not, of course, the proposition falls under that power. There are two other powers of the Constitution which would then support it.

Mr. HUDDLESTON. May I ask you at that point, as you are evidently about to proceed to something else——

Mr. THOM (interposing). No; I am going to discuss that point now.

Mr. HUDDLESTON. The case of Louisville & Nashville Co. *v.* Kentucky, in 161 United States, decides squarely the point that it is within the jurisdiction of a State, Congress not having acted, to forbid the consolidation of the corporations engaged in interstate commerce. There is no question but that that is the point involved.

Mr. THOM. That was decided in that case.

Mr. HUDDLESTON. And whatsoever in that decision is responsive to that question, of course, was not dicta.

Mr. THOM. No, certainly not.

Mr. HUDDLESTON. If I may say so, I have two points—first, the power of Congress to clothe the creature of the State with additional powers which it has not under the authority which created it; and, second, the power of Congress to do so in violation of a prohibi ion which exists in the law of the State. The case of California *v.* Pacific Railroad Co., 27 (U. S., p. 1), I believe it is, is cited as authority for the power of Congress to confer additional powers on the corporation created under the laws of the State, and the case of Louisville & Nashville Co. *v.* Kentucky is authority for holding that where Congress has not acted the State may forbid corporations engaged in interstate commerce to exercise powers in violation of their charter power.

As I recollect the case of California against the Pacific Railroad Co., it involved the single question of the right of the State to tax a franchise conferred by Congress, and it seems to have been assumed by everybody, including counsel on both sides and the court, that Congress had power to confer this franchise. The sole issue raised and argued by counsel and discussed by the court was whether the franchise conferred could be taxed.

So that that case is not very satisfactory to me on that point, and I wanted to ask you whether there is any other authority——

Mr. THOM (interposing). I am coming to a discussion of that whole question.

Mr. HUDDLESTON (continuing). For saying that Congress could confer these powers.

Mr. THOM. I go very fully into that question.

The question which I am now discussing, however, is the question whether or not the power to consolidate is a proper exercise of the power of regulation. I am coming to the other details of the question after I get through with some general observations that I have in respect to that power.

1. Let us, therefore, first consider whether provision for consolidation of carriers engaged in interstate commerce is a legitimate exercise of the power of regulation.

This does not seem to be doubtful.

It is, I believe, universally admitted that Government ownership of such carriers may be acquired and Government operation may be conducted under the commerce clause of the Constitution. This is an extreme form of consolidation, and, if this could be done under the commerce clause as a legitimate exercise of the power of regulation,

anything less than this extreme would seem also to be a legitimate exercise of the power of regulation.

In view of the unifying commercial forces, affecting transportation, brought into play by steam, by gasoline, and by electricity (including telegraph, telephone, and radio), Congress may conclude that the public can no longer be adequately served by a very large number of disjointed railroads, differently and independently managed and operated, difficult to coordinate to the extent that the movement of commercial traffic may require; that systematic, instead of haphazard and uncertain, coordination is necessary; that a system of better, more dependable, and more harmonious cooperation in the operation of the instrumentalities of commerce is needed in the public interest; that this important object will be promoted by fewer systems of roads; and that the best means of accomplishing this is through consolidation. Congress may likewise conclude that the problem of preserving weak roads, rendering an important service to the public, is a problem of national significance and can be dealt with and at least favorably and substantially influenced, and perhaps solved, by consolidation.

Again, as related to the "weak-road problem," there are two schools of thought in respect to prescribing divisions of joint rates with reference to the financial needs, instead of the relative service, of the participating carriers, and in respect to the present system of rate making, whereby certain shippers not served by a weak line are charged more than they should be, if the direct service they enjoy is alone considered, in order to support weak lines on which they are not directly dependent for service and whereby the excess thus paid does not go back to the shippers that have overpaid, but to the Government. One of these schools of thought indorses the view that the division of rates should be made with reference to the financial needs of, and in order to support the weak lines, while the other rejects this view and contends that the result is to take from a carrier that which it earns for a service which it performs and to give it to another which has not performed the service, simply because it needs it. One of these schools of thought indorses the present system of rate making, while the other believes that a method should be devised whereby no shipper should be charged more than is proper for the service which he directly receives and no carrier should be deprived of any part of the revenue which it earns from reasonable rates.

Congress may, under the decisions of the Supreme Court, adopt either of these views. If it adopts the latter view, it may reasonably conclude that the difficulty may be solved or that the proper remedy will be at least promoted by a policy of consolidation.

It can not be denied that to reach a conclusion by Congress on any one or all of the four aspects of interstate transportation above suggested is within the constitutional power of Congress, and its conclusions, when reached, can not be considered as arbitrary and are beyond challenge in the courts or elsewhere.

2. The discretion of Congress as to the selection of means to carry out its constitutional powers.

It has been firmly established, ever since Chief Justice Marshall's time, that a sound construction of the Constitution allows to Congress a large discretion with respect to the means by which the powers it confers are to be carried into execution, which enable that body to perform the high duties assigned to it in the manner most beneficial to the people, and that if the end to be accomplished is within the scope of the Constitution, "all means which are appropriate, which are plainly adapted to that end, and which are not prohibited, are constitutional." Gibbons *v.* Ogden (9 Wheat. 1, 196, 197); Northern Securities Co. *v.* United States (193 U. S. 336), and the cases there cited.

In the great case of McCulloch *v.* Maryland (4 Wheat. 316, 421, 423), it was said: "The sound construction of the Constitution must allow to the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional." (Interstate Commerce Commission *v.* Brimson, 154 U. S. 472.)

Ruddy *v.* Rossi (248 U. S. 107).

If, as above stated, Congress concludes that the consolidation of the existing systems of railroad is a proper means of accomplishing its constitutional purposes, its conclusion can not be successfully challenged.

3. The power of regulation extends not only to the methods by which interestate commerce is carried on, but also to the physical instrumentalities of such commerce.

The power (to regulate interstate and foreign commerce) also embraces within its control all the instrumentalities by which that commerce may be carried on and the means by which it may be aided and encouraged. (Gloucester Ferry Co. *v.* Pennsylvania, 114 U. S. 204.)

Its power extends to every instrumentality or agency by which it is carrier on. (Wisconsin Rate Case, 257 U. S. 589.)

Thus the entire instrumentality of interstate commerce is within the regulating power of Congress and when exercised the regulation is controlling and exclusive. (Minnesota Rate Case, 230 U. S. 411; Houston & Texas Ry. Co. *v.* United States, 234 U. S. 351; Hammer *v.* Dagenhart, 247 U. S. 269; Wisconsin Rate Case, 257 U. S. 589.)

4. The power to regulate is a power to "aid and encourage," to "foster and protect," as well as to "control and restrain."

(Gloucester Ferry Co. *v.* Pennsylvania, 114 U. S. 204; Houston & Texas Ry. Co. *v.* United States, 234 U. S. 351.)

Congress, under its power to regulate commerce, may make the interstate commerce system, including the instrumentalities of such commerce, "adequate to the needs of the country." (Wisconsin Rate case, 257 U. S. 589.)

Mr. MAPES. I do not know whether you have examined the case in connection with this question or not, but the general subject of the power of Congress over commerce and navigable waters, regardless of whether the State could or does not act, is discussed in the case of United States against the Sanitary District of Chicago, decided in January, 1925.

Mr. THOM. I do not think that I have seen that case. I will be glad to look at that.

Mr. MAPES. I think you will find it is of some interest in connection with this.

Mr. THOM. It would seem to be beyond question, in the exercise of the power of Congress over the instrumentalities of interstate commerce (Wisconsin Rate Case, 257 U. S. 589), of its broad discretion to "select the means" by which its constitutional powers may be carried out (McCulloch *v.* Maryland, 4 Wheat. 423), in the exercise of its power "to aid and encourage" (Gloucester Ferry Co. *v.* Pennsylvania, 114 U. S. 204), "to foster and protect" (Houston & Texas Ry. Co. *v.* United States, 234 U. S. 351), and "to make the instrumentalities of such commerce adequate to the needs of the country" (Wisconsin Rate case, 257 U. S. 589), and in view of the reasonable relation, as above shown, of consolidation to the power of regulation, Congress may deal with, regulate, and confer the power of consolidation on these instrumentalities, if it may confer the power upon corporations chartered by a State.

5. Inasmuch as exercise of the power involves the conferring by Congress upon State corporations of additional franchises, it is appropriate to consider whether Congress has this power. That it has, is abundantly established by repeated decisions of the Supreme Court of the United States. (California *v.* Pacific Ry. Co., 127 U. S. 1, 39; United States *v.* Stanford, 161 U. S. 412, 433; Southern Pacific R. R. Co. *v.* United States, 183 U. S. 519, 527.)

In the case of the Southern Pacific Railroad Co. *v.* United States (183 U. S., p. 527), it is said:

> It is well settled that Congress has power to grant to a corporation created by a State additional franchises—at least franchises of a similar nature.

That, of course, is to say, that the franchises granted to a transportation corporation must be with respect to commerce and transportation.

> Congress has frequently conferred upon railway companies, existing under Territorial or State laws, additional corporate franchises, rights, and privileges, and its right to do so can not be doubted. Thus it was held, in California *v.* Pacific Railroad Company, 127 U S. 1, 39, that Congress possessed and validly exercised the power to create a system of railroads connecting the East with the Pacific coast, traversing States as well as Territories, and to employ the agency of State as well as Federal corporations. (Oregon Short Line Railway *v.* Skottowe, 162 U. S. 494.)

It has exercised the power of limiting franchises granted by a State to a transportation corporation created by it, in almost every essential particular—in the making of rates, in the character of equipment, in the character of service, in the matter of safety, in the keeping of accounts, in the division of revenues, in the limiting of revenues, and in the issuing of securities. The Supreme Court has upheld this exercise of power wherever it has been questioned.

This authority to control the powers of a State corporation has not been exercised by Congress merely in the direction of restriction or limitation. It has been exercised to confer additional affirmative powers of the most fundamental and substantial character upon State corporations.

In California *v.* Pacific Railroad Co. (127 U. S. 1) the power was conferred upon a State corporation to extend its construction beyond the limits permitted in the State charter.

By the act of March 3, 1865, Congress conferred upon the Central Pacific Railroad Co., a State corporation, and the Western Pacific Railroad Co., a State corporation, in addition to their powers under their State charters, power to issue "their 6 per cent 30-year bonds" to a very large amount in the aggregate, and also conferred upon them other franchises. This exercise of power was mentioned with evident approval and without question by the Supreme Court of the United States in the case of United States *v.* Stanford (161 U. S. 426.)

6. In fact, Congress, in order to carry out a national object, constitutionally within its power, may employ any agency it sees fit. It may employ the agency of a State corporation as well as a Federal corporation. (Wilson *v.* Shaw, 204 U. S. 34; Pacific Railroad Removal Cases, 115 U. S. 1, 14, 18; California *v.* Pacific R. R. Co., 127 U. S. 39; United States *v.* Stanford, 161 U. S. 433.)

An important memorandum on the subject of the powers of Congress under the commerce clause of the Constitution was prepared in November, 1916—not long before his death—by the Hon. Richard Olney, Attorney General and Secretary of State in Mr. Cleveland's Cabinet. A part of it is pertinent here and is respectfully presented for consideration.

> 1. For all the purposes and functions of commerce between the States of the United States, between such States and Territories of the United States, and between such States and Territories on the one hand and foreign nations on the other, the United States is one country, with complete and exclusive jurisdiction over the whole subject—and State lines and jurisdictions are without significance.
>
> 2. Commerce, in the constitutional sense, covers transportation and intercourse in all forms and whether existing when the Constitution was adopted or since introduced and practiced.
>
> 3. The national commerce power, being of such extent and exclusiveness, necessarily subjects to national regulation and control all the agencies and instrumentalities by which national commerce is carried on.
>
> 4. It can not be doubted that a railroad corporation created by a national charter is an apt instrument for the carrying on of national transportation and that the organization of such a corporation with all appropriate powers and duties is a fit subject for treatment under the commerce power.

From the foregoing it will be seen that Congress, in the exercise of its power under the commerce clause, may itself create a corporation and endow it with all necessary powers as a means of regulating commerce; that, instead of itself creating such a corporation, it may avail itself of the agency of a corporation already created by a State and endow it with the necessary powers deemed by Congress essential to the carrying on and regulation of commerce.

7. The State itself can not complain of this power. It chartered a corporation and authorized it to engage in interstate commerce. By this act it consented in advance to subject it to the full exercise of the powers of Congress in the regulation of commerce. One of these powers is shown by authority to be to grant to the State corporation additional franchises for the purpose of promoting the interstate commerce for which the State corporation was organized.

Inasmuch as the additional franchise is a matter of regulation of interstate commerce, this regulation stands just as any other valid regulation by Congress and is beyond the power of the State to modify, to take away, or to question. The corporation still remains a corporation of the State and subject to its power, except that it can not affect this franchise, which, as stated, is a valid regulation by Congress of interstate commerce, and, as held in California *v.* Pacific Railroad Co., supra, "can not be taken away nor destroyed nor abridged nor can they be crippled by onerous burdens."

In other words, for the purpose of this franchise, the said corporation becomes in law, to the extent of the franchise, a Federal corporation, and the State can not destroy this Federal agency of interstate commerce, even under its power to repeal a charter. It may repeal those powers of the corporation which it granted and which are not essential or appropriate for the conduct of interstate commerce, but it has given its consent in advance to the creature which it authorized to engage in interstate commerce, to be subjected to the full exercise by Congress of its power of regulation.

Now, that is illustrated in the case of Mowbray against the Louisville & Nashville Railroad Co., which is a very interesting case. I have not quoted it here. That was a case where a person was injured on the Louisville & Nashville Railroad Co. and he made a settlement with the Louisville & Nashville road for that injury by the acceptance of a pass for life given by the Louisville & Nashville Railroad Co., and the pass was issued. Then Congress, in the act to regulate commerce, forbade that pass, and the question went up to the Supreme Court of the United States whether or not that pass was valid, having been issued before Congress had acted, or whether it was rendered invalid by the subsequent action of Congress, and the Supreme Court held that in accepting that pass from a road engaged in interstate commerce the acceptance was subject to the complete exercise by Congress of its power to regulate commerce, that the control of free passes was within that power and that, consequently, the party, in accepting that pass agreed in advance that it should be subject to the full exercise by Congress of its power to regulate commerce.

Now, here a State has chartered an instrumentality and authorized it to engage in interstate commerce. In doing that it consents in advance to the exercise by Congress over that instrumentality of the full power of regulation, whenever Congress gets ready to exercise it, and if it is in the constitutional competency of Congress to deal with consolidations under the power to regulate commerce, then the State can not complain of that, because it has consented that Congress may do so when it authorized this creature to engage in interstate commerce under the regulation of commerce; and here comes along Congress and exercises it to a given extent, and that has been consented to in advance by the State when it authorized its creature to engage in interstate commerce, and its control over its own creature then continues so far as all its aspects which are not involved in this congressional action are concerned, but when involved in this congressional action the authority of Congress is supreme.

As bearing somewhat on that view, but not at all parallel, it is interesting to recall what happened with the Broadway surface lines some years ago. The State of New York chartered the Broadway surface lines, authorized them to bond their properties, and to issue securities upon them, and afterwards the State forfeited that charter. Did the Broadway surface lines stop? The State could take away what it had granted; it could forfeit the charter, but the rights that had been created by virtue of the authority of the State in these bondholders was not destroyed, and those properties were at once taken charge of under receivership. It was necessary, in order to to protect those bonds, that the operation of the road should continue, and so under that receivership the road went on just as it had before.

The rights of the bondholders were protected because they had been consented to by the State in advance; but what the State had given it, and which it could take away without destroying these rights, was taken away.

So, in this case, the State having consented in advance that those instrumentalities shall engage in interstate commerce and shall be subject to the power to regulate commerce, and that power having been exercised, then the power of the State is limited to the taking away of such franchises as are not essential to the exercise of that power over interstate commerce by Congress.

Mr. BURTNESS. May I ask you one question, because I think it involves a good many of us who are not clear on it.

I can readily accede to the proposition that when the State gives birth to a corporation that may engage in interstate commerce, both the corporation and the State realize that that corporation is subject to the full regulation of any interstate business that it may engage in whenever Congress desires in any way to regulate it, so that regulations adopted in the nature of limitations and things of that sort must be conceded by anyone.

But the thing that bothers me is this, whether regulation of interstate commerce as contemplated by the Constitution includes furnishing that corporation with additional charter powers, powers which it does not have from the State which was responsible for its coming into being and powers which are even contrary to the public policy of the State.

Now, when it is simply a matter of limitation, I readily concede that the policy of the State can be set aside; but does this regulation include actually making these limited State corporations, for all practical purposes Federal agencies, with additional charter powers?

I know you have discussed it, yet that is the place where it is very, very difficult for me to follow you to that extent in your reasoning.

Mr. HUDDLESTON. May I make this suggestion? The constitutions of some of the States forbid that they clothe these carrier corporations with certain powers. The State proceeds to charter a corporation and to give it whatever powers its constitution authorizes it to give. It is said by Colonel Thom that the State does that knowing that the Federal Government can confer additional powers, and the State thereby impliedly consents that those additional powers may be conferred, and thereby the State may be permitted to violate its own consitution.

Mr. BURTNESS. That has, in my opinion, strong argumentative force, yet I do not see any distinction in principle between the Federal Government adding to the powers of the State corporation whether those powers be consistent or not consistent with the policy of the State. Necessarily, if we have the power to do one thing, it strikes me we have the power to do the other.

Mr. HUDDLESTON. Here is a concrete illustration that I would like to have Colonel Thom address himself to. He says in substance that a corporation organized under the laws of the State of Texas may have conferred upon it by Congress the power to operate a railroad in another State. The constitution of the State of Texas forbids that any corporation chartered under the laws of that State shall operate a railroad in any other State.

Mr. THOM. Just the reverse, I think, that the corporations of another State shall not operate in Texas.

Mr. HUDDLESTON. I think it is both. Is it not, Mr. Rayburn?

Mr. RAYBURN. I do not remember.

Mr. HUDDLESTON. My recollection is that it is both, but as a practical matter that will illustrate the point I am making. If we may say that that corporation was chartered by the Legislature of the State of Texas and consent was given by such charter that the Federal Government might confer these additional powers upon it, and it was chartered with the implication and understanding that the powers should be conferred upon it, we thereby enable the Legislature of the State of Texas to violate the constitution of the State of Texas, for, manifestly, a corporation can not be chartered with the consent and agreement that additional powers may be conferred upon it which the chartering authority itself could not confer, because, manifestly, if it can not do the thing itself it can not agree that the other power can do it.

Mr. THOM. I will address myself to that question in a moment. First I will answer Mr. Burtness's proposition.

I think it is abundantly established by the authorities that the authority of Congress is not confined to restrictions or limitations, but it extends to additional powers not conferred by the State itself. For example, as I have previously stated in respect to these additional powers, in California *v.* Pacific Railroad Co. (127 U. S. p. 1) the power was conferred upon a State corporation to extend its construction beyond the limits permitted in the State charter. By the act of March 3, 1865, Congress conferred upon the Central Pacific Railroad Co., a State corporation, and the Western Pacific Railroad Co., a State corporation, in addition to their powers under their State charters, the power to issue bonds to the extent of hundreds of millions of dollars, and also additional franchises—not restrictions, but additional powers.

Mr. BURTNESS. I do not know that it would make any great difference, yet it would be interesting to know whether those were contrary to the policy of the State or not.

Mr. THOM. I do not think that there was any prohibition of the State involved in those cases.

Mr. BURTNESS. It was additional, anyway.

Mr. THOM. Yes.

Mr. BURTNESS. I do not contend, personally, that it would make any great difference in principle whether it was contrary or not, as long as it was actually extended beyond the charter powers.

Mr. THOM. After you go beyond the charter powers—I am dealing with your question in answering that.

Now, your last question brings you to the same question that Mr. Huddleston has asked.

Mr. HUDDLESTON. May I interrupt you before you deal with that, to suggest that that case of California *v.* the Pacific Railroad Co. deals with the single question as to whether or not those franchises may be taxed by the State, and the court and counsel did not raise the issue as to whether or not the corporation had power to receive those franchises. That was just passed over, and it was assumed by everybody that the corporation could receive them, but the point was, they having been vested in the corporation, could the State tax them, and the court held that it could not because the power to tax was the power to destroy and it would enable the State to tax the franchise which Congress had given.

Mr. THOM. There can be no question, Mr. Huddleston, that there are many cases in the Supreme Court where the point has been expressly decided of the power of the Congress to grant franchises to State corporations when engaged in interstate commerce. I think you may rest assured that that is the case. I have enumerated them here, and you can find them at your leisure if you are interested. The case of California *v.* Pacific Railroad Co., to which you refer, has been many times cited by the Supreme Court itself as authority on the point you mention.

Now, as to your question about whether or not the legislature of a State, when forbidden by the constitution of the State to grant a charter to a company to absorb a parallel and competing line, can do that indirectly through the power of Congress, let us examine our system of government somewhat.

What are the laws of Texas, the State that you have alluded to? There are three—the statutes of Texas, the constitution of Texas, and the laws of Congress passed pursuant to the authority of the Constitution of the United States. The latter law is just as much a law of Texas as its own constitution and as its own statutes. I think we are very prone to forget that in our consideration of our system of government.

Each one of these States has three sources of affirmatively declared law. One is its statutes; another is its own constitution; and the third are the laws of Congress validly passed under the Constitution to which that power is a party.

So that, when you consider a problem as arising under a State statute, you can not appeal merely to the limitation of that State's constitution. You have got a third source of law for that State, and that is the Constitution and laws of the United States. They are just as much the laws of Texas as they are the laws of Congress. They extend to every foot of the territory of the United States. They are of universal application. They are the highest law of every State within the limitations of the Federal Constitution.

So that when you get to consider what the legislature of Texas has done in authorizing a carrier to engage in interstate commerce, the constitution of Texas does that just as well as the legislature, and the constitution of Texas, in authorizing this legislature to grant a charter to engage in interstate commerce, has itself consented to the application of the highest law of Texas, the Constitution and laws of the United States in respect to that matter.

It is, therefore, not a violation of the Constitution. When the State has consented, it has not done so merely through its legislature. It has done so in every way in which it can express itself, and it has subjected its own creature to the nighest law of its own State, that is, to the laws of Congress, constitutionally enacted.

Mr. HUDDLESTON. If I may state this, in tracing the origin of the life of a corporation, we go to the law under which it has its existence and being. The constitution of the State might create a corporation. Many of them do. The corporation may be created by the State legislature in pursuance of a constitutional authorization. It may also be created by Federal authority, under the commerce clause of the Constitution.

Mr. THOM. Not a municipal corporation.

Mr. HUDDLESTON. No; I am not talking about corporations of that kind.

And may I say that I do not for a moment question the power of Congress to charter a corporation which may be brought into existence anywhere, or under any conditions Congress sees fit to impose. The right of Congress to charter corporations and railroads in Texas, or in any of the States, can not be questioned, but when Congress has attempted to clothe a State corporation with these Federal powers, the powers of the franchises having their origin in the commerce clause of the Constitution, does not the corporation cease to be a corporation of the State of Texas, we will say, for instance, and become a corporation of the United States under the commerce clause of the Constitution?

Does not it owe its life—certainly it owes these franchises and powers—to the Federal Government; but can you separate the franchises and powers that the creature enjoys from the existence of the creature itself?

Mr. THOM. I think you can, and if the Supreme Court is properly interpreted, as I think it is in the statement that Congress is not required to charter a corporation of its own to carry out its powers, but has the right to select a corporation of a State to carry out its powers and to grant to that corporation of the State sufficient power to do that, then, of course, the question is answered.

Now, undoubtedly, the authorities sustain the proposition that to carry out its lawful powers, Congress may select a corporation of a State to do that and may clothe it with sufficient authority to do that. When it has done so, it has merely conferred upon a State corporation a power to do that special thing. It has not made that State corporation a Federal corporation, but it has conferred upon it a franchise, which franchise is beyond the reach of the State. Every other aspect of the corporation not involved in the full exercise of this franchise which Congress has conferred upon it is still within the power of the State; but, as stated here in California *v.* Pacific Railroad Co., the franchises granted by Congress "can not be taken away nor destroyed, nor abridged, nor can they be crippled by onerous burdens."

But that is the franchise which Congress has conferred. That is not the whole corporation, but to the extent of that franchise, the franchise which has been conferred under the power to regulate commerce, that regulation of commerce is beyond the reach of the State just as every other regulation of commerce is beyond the reach of the State, but no further.

Mr. HOCH. Right on that point, you are discussing the clothing of the State corporation with additional powers. Now, this bill not only does that, but it provides for corporate consolidation of State corporations into a new corporation which is designated in this bill as the "resulting" corporation. Now, is that resulting corporation still the creature of the State?

Mr. THOM. I think that is a very difficult question, Mr. Hoch. I have thought of that, and I think it likely would be determined in this way, that the consolidated corporation enjoying the State franchises as fundamentals would still be a corporation of the State; but there is room for discussion on that subject.

Mr. HUDDLESTON. Just one more question.

Suppose these corporations were organized by separate States, consolidating corporations. We will say that the Louisville & Nashville Railroad Co. came under the laws of Kentucky and the North & South Railroad Co. came under the laws of Alabama, and that they became one corporation under this bill.

What State is that corporation a citizen of, and to which does it owe its life?

Mr. THOM. That is just the question Mr. Hoch asked.

Now, it may be that as to the part of it that is controlled by the Alabama Legislature, subject to the powers necessary to carry out the consolidated purpose, it is still a corporation of that State; and that the Louisville & Nashville Railroad Co., subject to the same qualifications, continues to be a corporation of the State of Kentucky. But Mr. Hoch has suggested a proposition that seems not to be free from doubt. It may be that the court would hold that such a consolidation becomes a new corporation which owes its entire life to Congress. I have arrived at the other conclusion, but it may be that there is ground for his contention.

Mr. HOCH. I was not raising the question as to the power of Congress to do it.

Mr. THOM. I know, but you were raising the question of the result, and I have debated that out with myself for a considerable time and I do not think the question is free from doubt.

Mr. BURTNESS. As a practical proposition, as these consolidations would be effected, is it contemplated by those who are proponents of the bill that this resulting corporation shall be one of the carriers whose property is being merged?

Mr. THOM. That is the most frequent case.

Mr. BURTNESS. Or is it also contemplated that if it is absorbed, they might form an entirely new corporation, get a charter from some State, and that that new corporation would simply receive the property of these various carriers?

Mr. THOM. Each of those is possible, but the most frequent case will be that there will be one existing corporation that exists now that would acquire a number of others, and it would be the nucleus.

Mr. BURTNESS. If that would be the case, while you say the question is not free from doubt, it is still your opinion that the corporation will remain a State corporation chartered by the State from which it originally obtained its charter, but that it would, however, receive additional franchises under the Federal law?

Mr. THOM. Yes; I have no doubt that, in the case you are now referring to, it would remain a State corporation, because there a State corporation will absorb a number of others.

But Mr. Hoch's question was this: Suppose, instead of that happening, that there were a number of corporations coming together and technically consolidated into a new corporation?

Mr. HOCH. That is provided for specifically.

Mr. THOM. Yes, that is provided for specifically, and he asks what that corporation would be. Would it be a corporation under the laws of Congress, or would it still be a State corporation?

Mr. BURTNESS. Would not as a practical matter steps be taken under this bill to form a new corporation receiving a charter from some State where they did not desire to use an existing corporation?

Mr. THOM. I think that would probably be done, undoubtedly, just as you say, as a practical matter.

Mr. HOCH. But suppose that the State would refuse to do it?

Mr. THOM. Then probably some other State would not refuse to do it. I think that would be done.

But I understand Mr. Hoch to be interested in the pure legal question as to whether, if no such steps as that were taken, and the result of what is done is to form a technically consolidated company which, technically considered, would be a new corporation, it would be a corporation of the State or of the United States, or where that corporation would have its situs. I am inclined to think that there are so many State franchises involved in that that it would preserve them as a State corporation; but there is room for disputing that proposition.

Mr. BURTNESS. All I care to say on it is this, that it seems to me that if there were created a new corporation the practical way would be to take out a new charter somewhere.

Mr. THOM. I think you are right about that.

Mr. BURTNESS. And I do not see why the bill or the law should contemplate anything else.

Mr. THOM. I think you are right about the way it is going to be done. In fact, the way it is going to be done is this, that there will be one of the existing trunk lines that will be the stem of every one of these consolidated companies.

Now, I will be through in a few minutes.

The CHAIRMAN. Before you proceed, could you come back Thursday morning as well as to-morrow?

Mr. THOM. Yes.

It is interesting to note that one of the largest and most useful systems of railroad transportation on the continent—the Union Pacific—is the product of the exercise by Congress of the authority to confer upon a State railroad corporation the corporate power to consolidate with another railroad corporation. In this case the Leavenworth, Pawnee & Western Railroad Co. was incorporated by the Legislature of the Territory of Kansas in 1855. In 1861 the Territory of Kansas became a State. In 1862 Congress authorized this corporation, which was then a corporation of the State of Kansas, to consolidate with the Union Pacific.

The Leavenworth, Pawnee & Western Railroad Co. accepted the provisions of this act of Congress and was thereafter designated as the Union Pacific Railroad Co., eastern division. In 1864 Congress passed another act with reference to the route of that road and made provision likewise for the consolidation of any two or more corporations embraced in the system. In 1866 Congress passed an act authorizing the above-mentioned company to make its connection with the Union Pacific at a designated point; and by another act in 1869 the company was authorized to extend its road to Denver and was given other powers. On the same day Congress passed a joint resolution authorizing this company, under the name of the Union Pacific Railroad Co., eastern division, by a resolution of its directors, to change its name to the Kansas Pacific Railway Co.

On the 24th of January, 1880, the Union Pacific Railroad Co., the Kansas Pacific Railway Co., and the Denver Pacific Railway & Telegraph Co., acting under the authority of the act of Congress of 1862 and of the act of Congress of 1864, entered into an agreement for the consolidation of the three corporations into one, by the name of the Union Pacific Railway Co., and, as stated by the Supreme Court—

> from that time the road of the Kansas Pacific Co., including that portion which lies in Kanas, has been operated and managed as the Kansas division of the Union Pacific Railway Co.

At the first session of the Legislature of Kansas after this consolidation was effected, a resolution was passed directing the attorney general to inquire into its validity, and subsequently, at another session of the Kansas Legislature, the attorney general was, by a resolution, directed to institute proper proceedings in the Supreme Court of that State by way of quo warranto to challenge the legality of the consolidation of this State corporation with the Union Pacific under the authority of an act of Congress.

A motion to remove to the United States court was made and was denied, and thereupon the case was taken to the Supreme Court of the United States to test the question of its removability to the Federal courts. The Supreme Court decided that the case was removable because the Federal question of the validity of the act of Congress authorizing the consolidation was involved, and in Ames *v.* Kansas (111 U. S. 449) the right to remove was upheld and the case remanded to the lower Federal court for further proceedings.

After the return of the case and after the circuit court was directed to entertain the case as properly removed from the State court and to proceed accordingly, the State of Kansas abandoned its attack upon the validity of the consolidation.

The Union Pacific is thus to-day made up in part of the property of the Kansas Pacific Railway Co., which it acquired under the authority of Congress authorizing the State corporation to consolidate with it.

It is submitted that the result of the foregoing discussion is to uphold the power of Congress to authorize State corporations engaged in interstate and foreign commerce to consolidate under such terms as Congress may prescribe.

The CHAIRMAN. The committee stands adjourned until 10 o'clock Thursday morning.

(Whereupon, at 12.10 o'clock p. m., an adjournment was taken until Thursday morning, June 17, 1926, at 10 o'clock a. m.)

RAILROAD CONSOLIDATION

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Thursday, June 17, 1926.

The committee met at 10 o'clock a. m., Hon. James S. Parker (chairman) presiding.

The CHAIRMAN. The committee will please come to order.

STATEMENT OF ALFRED P. THOM—Continued

Mr. THOM. Mr. Chairman and gentlemen, on Tuesday I presented an argument intended to sustain from a legal standpoint the constitutional authority of Congress to confer power to consolidate upon State corporations engaged in interstate commerce.

Reverting now to the bill which the committee has under consideration, I take the liberty of dividing it for the purposes of discussion into four parts:

First, definitions; second, declaration of policy; third, proceedings and machinery to carry into effect an authorized unification; and fourth, steps to be taken at the end of a given period in case unifications have not been completed.

I will consider these briefly in their order.

There are two comments I wish to make on the definitions which will be found on page 2 of the bill.

In subparagraph A of paragraph 2 of section 201, on page 2, you will observe that the definition of certain kinds of carriers is given.

In lines 16 and 17 of that page, you will see that there are included sleeping-car companies and express companies as corporations subject to unification with other carriers.

I wish to ask the committee to strike out of the bill "sleeping-car companies and express companies."

I have already presented that request to the chairman and understand that it is agreeable to him. The reason for it is, of course, you do not know with which one of the railroad companies to unify the sleeping-car companies and you do not know with which one of the railroad companies to unify the express companies.

They are universal in their service. The Pullman Company is very anxious to be excluded, and I have agreed to make the motion on their behalf to exclude them. I have conferred with the chairman. This idea is, as I understand it, indorsed in the letter which Mr. Esch sent here the other day, and I hope sincerely that you will see your way clear to make that exclusion.

Mr. NEWTON. May I ask, do you happen to know just how they were included in the first place? Was it done through design or was it due to the fact that in drafting the bill they copied some language from some previous statute?

Mr. THOM. I assume the latter, Mr. Newton. There is a definition of carriers which includes them, and I assume that was just followed without very great consideration.

Mr. NEWTON. I had that impression.

Mr. THOM. Yes.

The other matter to which I wish to call attention in the definitions will be found in paragraph 4 of section 201, beginning in line 22, in which a definition is given of voting securities.

The policy behind that definition is evidently to confer voting rights on certain classes of stock which do not now possess it, and I should like to have the patron of the bill, the chairman, and the committee consider anew that question, if they will. I am especially interested in the question, because of a letter which I have here from the president of the Chicago & North Western Railroad.

Mr. Sargent engaged in correspondence with Senator Cummins and with Mr. Eastman, chairman of the Interstate Commerce Commission, and he sent me copies of that correspondence.

According to him, there are a number of carriers which, under their charters, have the right to consolidate by the vote of a majority of their stockholders. A minority have not the right to prevent consolidation and have no cause of complaint when a consolidation is made by a majority vote, because they have entered into their relationship with the corporation under an agreement that the majority shall consolidate.

At the proper time, in a subsequent portion of the bill, I wish to bring that suggestion again to the attention of the committee. I am using it now merely as illustration, as the policy of the bill in this definition goes directly counter to that and goes one step farther, and says that if there is a class of stock the holders of which understood when they acquired it that they should have no vote whatever on any of these questions, this definition gives a vote on the question of consolidation to that class of holders.

I appreciate that an argument can be made in favor of that proposition, that where a charter is silent, where such a large matter as an entering into a new enterprise is involved, and where the securities of the holder may be affected by it, that possibly he ought to have the right to vote.

I am not entirely persuaded by that argument myself, and I wish to lay it before the committee as to whether or not they will not so modify this definition as to confine it to outstanding shares of the capital stock having the power to vote.

Without going further into that subject than to call it to your attention, with the suggestion that this is novel, that it runs counter to the actual contract rights of some of the stockholders, who have agreed that they shall not have the right to compensation for consolidation if insisted on by the majority, and that it creates a power of voting here where under the charter there never was one in this particular class of stock. I do not think there is much involved in it, but I do think that when you consider the consequences of this definition, that you are passing on to such a holder the right to have his stock condemned if he dissents, you considerably broaden the condemnation provisions of the bill.

If the definition were confined to those having the right to vote under the charter, then those who did not have the right to vote would not rank as dissenting stockholders, because they would have no opportunity and no rights to dissent and there would, therefore, be no obligation to condemn their stock.

You may say that that is perhaps an argument in favor of the proposition. From one standpoint it is. But I think it must be considered that you are trying here to legislate on a question which you intend to decide on the public interest, and if you conclude that consolidations are in the public interest, how far you ought to go in creating new rights that will have to be in some way provided for at considerable expense in order to carry it into effect, is worthy of your consideration.

Mr. BURTNESS. To carry out your thought, Colonel, it would not be sufficient to eliminate simply the words in the parenthesis "whether or not such shares have voting privileges." There would have to be some qualifying language to "outstanding shares of capital stock."

Mr. THOM. Yes, sir; there would have to be something of that sort, such as this: "The holders of which have the right to vote in the election of directors of the carrier." There would have to be something of that sort.

Mr. MAPES. Do you think, Mr. Thom, there is any question of the right or the power of Congress to aribtrarily say that stock in existing corporations shall or shall not have voting privileges?

Mr. THOM. I do not think there is any doubt about the power of Congress to say that they shall have the right to vote on a question of consolidation which it has created.

Mr. MAPES. Even though the charter does not give them the right to vote?

Mr. THOM. I think it can. I think that is within the power of Congress.

Mr. MAPES. Under its power to regulate commerce?

Mr. THOM. Yes; under the power to regulate commerce.

Mr. HUDDLESTON. If Congress has control of that feature of the capacity of the stockholder, of that element of the stock, why does it not have control in the matter of management of companies?

Mr. THOM. Why not what?

Mr. HUDDLESTON. Why has Congress not control of what stock shall have power to vote in the matters of the management of the affairs of the railroad? In short, the public interest may be just as much involved in the management of the carrier as in the matter of consolidation.

Mr. THOM. I think that it would have to have a proper relationship to the matter of the regulation, and when you get to management you get into a private element. I do not think that Congress would have the right to deprive the carriers of the right of management because of the fifth amendment to the Constitution. There is a conflict there.

Mr. HUDDLESTON. Of course, the public interest might be as intimately, perhaps even more intimately, involved in management than in consolidation.

Mr. THOM. But the entire power of regulation is limited by the fifth amendment to the Constitution. The power of regulation was

in the first part of the Constitution adopted by the people. The fifth amendment was put in afterwards as an amendment, and that limited everything that had been previously included in the Constitution.

Mr. HUDDLESTON. If this were a Federal corporation, if Congress were creating a corporation, it would have the power to provide what their powers would be?

Mr. THOM. It would have, for the reason that if a charter created by Congress is accepted it becomes a matter of contract, and the things that are accepted as a matter of contract get beyond the question of the fifth amendment, because they are matters of agreement.

Mr. HUDDLESTON. Do you not think that Congress, if so minded, might not provide that no carrier should engage in interstate commerce that had not been chartered under an act of Congress?

Mr. THOM. I think it could.

Mr. HUDDLESTON. So that at last we could force such terms as we chose in that respect on these corporations and their stockholders?

Mr. THOM. They could not force the corporation to continue in interstate commerce under those conditions.

Mr. HUDDLESTON. But if it should continue?

Mr. THOM. If it should continue and accepted the terms it would be a different proposition.

Mr. HOCH. Before you leave the matter of the definitions, I want to call your attention to the first two lines on page 3. This question is perhaps supertechnical, but this is a technical matter. Under paragraph 4, voting securities include not only stock, but certain classes of bonds, whatever they are, which, under contract, have the power to vote. Now, this says:

> Securities, the holders of which, under the terms of a mortgage deed of trust or other contract, have the right to vote upon the question to be determined.

It is the latter part that I wish to call to your attention—"upon the question to be determined." What is the effect of that language? It evidently does not mean this question to be determined, the consolidation question, because presumably the mortgage, deed of trust, or other contract would have nothing in it about the right to vote upon a question of consolidation.

Mr. THOM. My interpretation of it is that it applies only to such bonds as under a mortgage would have the right to vote on the subject of consolidation.

Mr. HOCH. If that is what it means, I think that it ought to be made clear, because my first thought was that this was to include bonds which have the power to vote upon any corporate question.

Mr. THOM. That is not my interpretation, and I do not think it ought to do that. The bond stands in a far different relationship to the property than does the stock. Under the terms of this bill and under any proper terms, the lien of those outstanding bonds is not disturbed. The holders still retain their rights to the security which they previously contracted for, and therefore the interest of the bondholders would not be diminished. It seems to me that their interests would be promoted by consolidations, because they would

have a mortgage on a part of the property that had been greatly strengthened, under the theory of the bill.

Mr. HOCH. Would it not be preferable to say specifically, "upon a question of consolidation"?

Mr. THOM. I think it is very well to do that. I hope that your committee will take that up with your legislative counsel. I think that is what it means and I think that is what it ought to mean. If it does not mean that, it ought to be made to mean it.

Mr. HOCH. I am now talking entirely without information as to what the actual facts are, but there might be some bonds that have the right to vote upon a question of management. That is "a question to be determined."

Mr. THOM. Not to be determined by that vote. And I think it means to be determined by that vote.

Mr. HOCH. At any rate, I think it ought to be made clear.

Mr. THOM. I hope you will make it clear, if it is not, because manifestly that is what ought to be accomplished, in my judgment.

The CHAIRMAN. Colonel, are there not some classes of bonds that have the right to vote on certain questions?

Mr. THOM. Yes, sir; under their mortgage.

The CHAIRMAN. That is meant to cover bonds of that kind, is it not?

Mr. THOM. Only if they have the right to vote on this particular question.

Mr. HOCH. That is specifically the question I am getting at.

Mr. THOM. That is the question Mr. Hoch is asking.

The CHAIRMAN. My interpretation was, when the bill was drawn, if they had the right to vote on the transfer of assets and the consolidation included the transfer of assets, then they would have the right to vote on consolidations.

Mr. THOM. I think that it is then involved in the question. I think that is a question to be determined by the vote. My construction of this is, and as I said to Mr. Hoch, if I am wrong about that or there is any doubt about it, it ought to be made clear, that if the question of consolidation comes up and the mortgage provides that on that question the bonds should have a right to vote, if consolidation involves, as the chairman has suggested, a transfer of assets, and the mortgage provides that on any question involving the transfer of capital assets the bondholders have the right to vote, I think they would have the right to vote and to vote on that only.

Mr. HOCH. Would it not be better to say on a question involving consolidation? Where the transfer of assets involves the determination of the question of consolidation, then they should vote on consolidation.

Mr. THOM. On a question involved in the unification; but I think Mr. Alvord would be able to make a suggestion that would meet the views of the committee. The view I urge on the committee is that they confine the right of the bondholder to vote to questions that are to be decided on the application for consolidation or unification.

Mr. HOCH. I supose that you advance that partly upon the theory that the voting right is somewhat of an anomalous right, anyhow, of a bondholder?

Mr. THOM. Yes, sir. In order to protect the bondholder, there is no reason for extending it beyond his rights under the mortgage.

In respect to the declaration of policy, I shall be brief. In a general way, I would say it seems sufficient from a legal and practical standpoint, for the purposes which you gentlemen have in mind, so far as I can see; but it is desirable, it seems to me, to call attention to one aspect of this declaration, and that is the emphasis it lays upon the wisdom of the policy of preserving necessary weak and short lines.

I think that it would be well for you gentlemen to consider in connection with this declaration of policy what I find in paragraph on page 8, which is as follows:

> The carriers and the commission shall give due consideration to the inclusion in the plan of short and weak carriers in the territory involved; and in order that the policy declared in section 202 of this title may be carried out, the commission is directed to make and have available for its use, a study of the short and weak carriers.

When you take the declaration of policy in so far as it relates to weak and short lines, and couple it with that, and remember Mr. Hall's testimony in regard to the importance that the commission attached to that problem, I think you will have before you pretty good assurance that the weak-road problem is going to receive real attention under a bill such as this.

Now, as to the proceedings and machinery, which is the third of the subdivisions which I for convenience have made of the bill for the purpose of discussion:

From my standpoint, it is necessary for you to provide some sort of proceedings to carry into effect any consolidation which is by the commission determined to be in the public interest and which is authorized by them, or the process toward consolidation will stop in a great many important cases because of the lack of means to accomplish it. You must have this machinery.

In the main, I will say that the machinery which you have provided in this bill is adequate, in my opinion. There are certain features of it to which I wish to call special attention.

The one to which I would first address myself is the plan here presented of dealing practically with the question of consolidation. When the application comes up, what can the commission consider? What ought the commission to consider?

Granted that a system of consolidation can be justified and would be adopted by Congress only if in the public interest, and a proposal is brought forward which is alleged to be in the public interest, ought the commission to have to wait to take the step which it finds in the public interest until it considers and deals with and disposes of a lot of private rights?

I was very much concerned to hear Mr. Commissioner Hall, in reply to Mr. Huddleston's question, take the ground that the commission could do so under this bill.

Mr. MAPES. We did not hear that.

Mr. THOM. I say I was very much concerned to hear Mr. Hall, who is, of course, a very capable lawyer, interpret the bill before this committee as authorizing the commission to do that. My interpretation is just the contrary, and my convictions on the subject are very pronounced.

I will take an illustration: Some time ago there was brought to the commission an application to consolidate what is known as the Nickle Plate properties with the Chesapeake & Ohio and other properties.

Now, that was or was not an application to advance the public interest. Ultimately it was determined by the commission that the association of those properties was in the public interest, but we witnessed the spectacle that for three-quarters of a year the public interest was held in abeyance while there was a fight between private stockholders as to their rights.

If this was to be in the public interest, and was so on the first day of January, say, when the application was made, why should that step, which was essential or desirable in the public interest, be made to wait until the first day of next December while private stockholders pulled and hauled for their respective views and rights before that commission?

There ought to be some way found to determine that question of the public interest with reasonable promptness and out of consideration for that alone, and the private rights of individuals should be relegated to some other forum where they could be finally determined.

Now, my interpretation of this bill is that it does that. If it does not, I hope that you will think of it well yourselves and confer with your legislative counsel and that you will make it certain that it does it.

So that when it is determined that the public interest will be promoted by a step made possible by this bill, it can be taken and taken with reasonable promptness and not be confused by, and not be delayed indefinitely while some dissenting stockholder says, "I am not getting enough for my stock."

I was in hopes to hear Mr. Commissioner Hall say that he had interpreted this bill that way. But Mr. Huddleston cross-examined him on that question and he said he did not interpret it so.

It was evident from his answers that he thought that the commission's function under this bill would be what it was under the present law, paragraph 2 of section 5, and that they could then inquire into what the equities of everybody were and deal with the whole question, and in the meanwhile the public interest should wait.

Mr. NEWTON. Right on that point, is that done under the theory that before the public interest can be ascertained, there must be determined the rights of the private parties?

Mr. THOM. That is done under these broad terms of paragraph 2 of section 5. That paragraph deals with the acquisition of control by lease or purchase of stock and otherwise.

It authorizes the commission to determine whether or not the proposal is in the public interest, and then says, if it does conclude that it is in the public interest—

> the commission shall have authority by order to approve and authorize such acquisition, under such rules and regulations and for such consideration and on such terms and conditions as shall be found by the commission to be just and reasonable in the premises.

They construe that as putting the whole question of consolidation and determining conditions of it and involving the relation to it of private rights, as a matter before them and within their jurisdiction, and on which they must pass.

Mr. NEWTON. Your construction of the existing law, then, is contrary to the construction placed upon it by the commissioner?

Mr. THOM. No. I say that they find their justification in that language. There is no such language in the present bill that I can find. On the contrary, the present bill requires the commission to determine the question from the standpoint of the public interest, and then provides a way of dealing with the rights of the dissenting stockholders in a court, separate from the commission.

Mr. BURTNESS. Let me see if I understand your point. Your construction of the bill before us is based on the fact that in section 207 of the bill the only condition that the commission is to take into consideration, that is set out in specific language, at any rate, is in lines 11 and 12—

> the public interest in adequate and efficient transportation service and the policy of Congress herein declared—

that is, if that is promoted. Then, later, in that same sentence, the commission is really instructed to—

> enter an order approving the plan, on the terms and conditions and by the methods set forth in the petition, or with such modifications thereof, or upon such terms, conditions, and methods, as it may prescribe as necessary in the public interest.

It seems to be limited strictly to the public interest, whereas the language in paragraph 2 of section 5 that you have just quoted is very much broader.

Mr. THOM. That is my contention. I think that the only question on this bill that the commission could consider, and the only one that they ought to have the power to consider, is the public interest.

Mr. HOCH. Let us examine that just a little further. It says in line 14, page 7—

> the commission shall enter an order approving the plan, on the terms and conditions and by the methods set forth in the petition.

Now, it must either approve the terms and conditions which the carriers themselves have set up, or it must approve them with such modifications as it thinks to be in the public interest.

Now, while the basis of determination is the public interest, is it not obligatory upon them to actually determine the terms and conditions upon which the consolidation shall be effected, because they must either approve the plans submitted or they must set out specifically the modifications which they think are necessary?

Mr. THOM. I think that the modifications and the changes in the terms and conditions which they can make are all limited to the consideration of the public interest.

Mr. HOCH. I think that that is the ground on which they must determine it, but how are they going to enter this order until they actually do determine the terms and conditions, which would involve the terms and conditions upon which the dissenting stockholders should be compelled to enter into the consolidation?

Mr. THOM. The dissenting stockholders are not compelled to enter into it under the terms of this bill. The only conditions that the commission can attach to a proposal are such as it finds in the public interest. That is the test, as I construe this bill, of every term and every condition which they can attach and which they may approve.

Mr. BURTNESS. And the remedy of dissenting stockholders is set out in a subsequent part of the bill.

Mr. THOM. Yes.

I want at this time to call your attention to a legal consequence of that.

The remedy which the dissenting stockholders have is to be paid for the stock, its proper value. That is the remedy. The stockholder disappears then as a factor in the consolidation, in the new enterprise. He is paid for his stock, under condemnation, and that value is determined under condemnation proceedings.

But let us see what that involves as a consequence, as to the condemnation proceedings. It is a universal principle of condemnation, so far as I know, that when any association or corporation or city or State or the Government of the United States institutes a condemnation proceeding, and there is an award in that proceeding as to the value of the property to be taken, there then is a power on the part of the applicant to abandon the condemnation proceedings in the event that the award is larger than it is willing to pay. That is universal. You can not do that here.

Your consolidation under this bill, as I construe it, may have taken effect, and the absolute right of the dissenting stockholders to be paid arises, and if condemnation proceedings are instituted, either by him under this bill, as he may do, or by the carrier under this bill, as it may do, and an award is made of the value of that property, the condemnation proceedings can not then stop. That award, when finally approved by the court, becomes final and must be paid.

Mr. MERRITT. It must be accepted also?

Mr. THOM. And it must be accepted; and you have no way of abandoning the proceedings—why? Because the consolidation, under the theory that the public interest must not wait, has gone on and been completed. You have only then to deal with those people who have rights, because of the consolidation, the dissenting stockholders, and you proceed against them by condemnation, and you have got to carry it through. You can not abandon it.

Mr. HOCH. Nevertheless, the commission will have had to pass on all the terms and conditions set out in the petition of the carriers?

Mr. THOM. I think that that is only from the standpoint of the public interest. That is my interpretation of this bill, and if it is not so, I think you ought to make it so.

Mr. BURTNESS. As I understand it, they simply accept the terms and conditions that have been agreed upon by the carriers.

Mr. THOM. If they approve them.

Mr. BURTNESS. As they come to them and if they find that the consolidation as such is in the public interest.

Mr. THOM. That is what I think, Mr. Burtness.

Mr. BURTNESS. That is the policy laid down in this bill.

Mr. THOM. Well, if that is not true, I think that you ought to make it so in your bill.

Mr. BURTNESS. But so far, until you mentioned it, I had not noticed any argument in the hearings—there may have been some when I was out—which touched upon the advisability of taking away from the commission the power which it has at least now exercised and used, namely, that of protecting the rights of minority stockholders upon these questions. Really, I feel that it is rather a serious subject and that it is one on which we ought to be given both viewpoints, because it is involved directly in this bill.

Mr. THOM. Yes. I am proposing to discuss, as I go on, the adequacy of the protection that is given to the dissenting stockholders.

Mr. HUDDLESTON. Colonel, just on that point. Mr. Merritt referred a moment ago to the fact that the dissenting stockholder was required to accept whatever value it was found the stock had. Don't you think it would be fair to give him the alternative of entering into the consolidation and participating on the same terms as other stockholders?

Mr. THOM. I think that it would be fair. He has had his day, however, but I have no doubt that the corporation would be glad to get that power.

Mr. HUDDLESTON. The bill does not give him the right, as I understand, because I think Mr. Merritt's interpretation is correct, that once this right of eminent domain is exercised and the value of the stock is found, neither party has any alternative, except one to pay and the other to accept the value.

Mr. THOM. I think that that is so, and it is based upon the theory that he has had his day in court, that he has had a right to attend the meeting and had attended it and has voted, and that he has thereby then exercised his election not to go into the consolidation.

Mr. HUDDLESTON. But he might prefer to go in rather than to get a valuation——

Mr. THOM (interposing). So far as I am concerned, as representing the carriers, I would have no objection to such a provision giving him a renewed opportunity, after the award, to go into the consolidation, unless—this has just occurred to me—unless there might have been such a crystallization of capitalization, something of that sort, based upon his refusal to come in, that it would not be easy to deal with that question as an open one. That is a matter to which I would have to give some consideration.

Mr. HUDDLESTON. I understand your view is that the consolidation is entirely independent of the right of the dissenting stockholders; in other words, the consolidation becomes effective then as a subsequent and resulting proceeding, when this right of eminent domain is exercised, and to put that in contrast, I want to ask you what you think would be the effect if sections 212 and 213 were stricken out, or were held unconstitutional by the Supreme Court? In short, what would be the situation if this provision covering the matter of dissenting stockholders and the exercise of the right of eminent domain, were eliminated? Where would the parties be then?

Mr. THOM. What would be the constitutional validity of the act?

Mr. HUDDLESTON. No; I mean, what would be the practical situation of the parties?

Mr. THOM. The practical situation would be this, that they would be with no remedy except to go into the consolidation.

Mr. HUDDLESTON. You think, without that, that the dissenting stockholder would have no remedy at all except to go on into the consolidation, on the terms proposed by the majority?

Mr. THOM. I think that is so.

Mr. HUDDLESTON. Is it clear that without these provisions referred to the consolidation could be effectuated?

Mr. THOM. I think that it could, but I think that you ought, in such an important matter, to make your constitutional foundation as strong as possible, and the reason I think it could, is this: When a number of people associate themselves together as stockholders to create an agency of interstate commerce, they thereby consent by that very act to the full exercise by Congress of the power of regulation.

And to take the consequences of whatever Congress may do as a measure of justified regulation. Now, if consolidation is a proper measure for Congress to adopt under the commerce clause, my own judgment has always been that that binds the dissenting stockholders, because they have consented to it in advance.

Mr. GARBER. In the exercise of that power would not Congress be limited?

Mr. THOM. I do not think so. I think it has full power to exercise its authority under the commerce clause to the full extent of regulation.

Mr. HUDDLESTON. If stockholders, by entering into a corporation engaged in interstate commerce, impliedly agree to abide the result of the proper regulation of commerce by Congress, and consolidation is a proper regulation, then stockholders, both minority and majority, impliedly agree to submit to consolidation and they can not dissent, and Congress can pass a law consolidating corporations without any of the stockholders consenting to it. Is that not true?

Mr. THOM. In answering you as I did before, perhaps I was inaccurate, Mr. Huddleston. I think there is a good deal of basis for what you say. The only limitation would be whether or not the proposition violates the fifth amendment. And let me add this: Of course, that raises serious questions, but the principal objection in my mind to compulsory consolidation is that it is not practical; you can not do it; you can not raise the money for it; you can not carry it out; the methods of doing it are not available.

Mr. HUDDLESTON. Do you oppose compulsory consolidation as a matter of principle?

Mr. THOM. Yes; I do.

Mr. HUDDLESTON. May I ask why?

Mr. THOM. In principle I think that if Congress were to pass a bill taking that vast amount of property and by force converting it into something else, you would destroy the financial fabric of this country. I think it would be ruinous to the stability of the financial system of the country. Such an exercise of the power of Congress over private property would so shock the country that all confidence would be gone, and the panic that would ensue would be immeasurable, in my judgment.

99790—26——27

Mr. HUDDLESTON. You have said that these stockholders impliedly agreed to it when they organized the corporation.

Mr. THOM. I say to the fullest extent of regulation, and if compulsory consolidation is a proper exercise of the power to regulate and is not arbitrary, then they have consented to it, as a matter of logic, but of course subject to the fifth amendment.

Mr. HUDDLESTON. Just how do you get the difference between enforced consolidation where a majority dissents and enforced consolidation where a minority dissents?

Mr. THOM. In its effect upon the public?

Mr. HUDDLESTON. Yes.

Mr. THOM. I think it is very great. The truth of the matter is that when you carry out a system of voluntary consolidation, no road can afford to enter into it unless it has by negotiations made the minority very small. While you are giving the power to 51 per cent of the stock to carry through a consolidation, and to condemn and pay for 49 per cent of the stock, it would be such an immense undertaking from a financial standpoint that practically you are not going to be able to do it. You are going to find that before they ever begin they will have brought into accord with their aims almost the entire stockholding power of the company, and when they come to condemn, especially under a system where you can not retire from your condemnation proceedings, the financial burden is going to be determined in advance, to a certain extent.

Mr. HUDDLESTON. I call your attention to the fact that this bill, as I interpret it, authorizes a minority to consolidate, not only a minority of financial interest, but a minority of stock ownership.

Mr. THOM. If so, it has escaped my attention.

Mr. HUDDLESTON. Of course, the consent of the bondholders, who may have a majority of financial interest, is not required, unless they are given a vote. We give them the right to participate in proceedings, which we do not give to those having voting securities, which might be a very small minority of the shares of stock outstanding, as was proposed in the Nickel Plate bill.

Mr. THOM. To what portion of the bill are you referring, Mr. Huddleston?

Mr. HUDDLESTON. Subsection 3, section 208, page 8, which reads as follows:

> The holders of the voting securities of any such carrier shall be held to have consented thereto if the holders of a majority in amount of such voting securities, present in person or by proxy at an annual or special meeting, vote for the adoption of the plan, as approved. Notice of such stockholders' meeting shall be given, and such meeting shall be held and conducted, in any manner lawful for an annual or special meeting (as the case may be) of the stockholders of such carriers.

That requires a majority in person or by proxy, and does not require a majority of the whole outstanding shares.

Mr. THOM. But the meeting has to be composed, in accordance with the law, of a majority present. I suppose if you would push it to the extreme there might be such a result as you suggest, that there might be a minority of all outstanding stock that would be able to consent. If there was a company that required only for a quorum a majority of the stock, then at such meeting a majority of that majority, which would not be a majority of all the outstanding stock, might exercise that power.

Mr. GARBER. That section gives the majority the right to exercise its power?

Mr. THOM. It does.

Mr. HUDDLESTON. You think my interpretation is correct, do you not?

Mr. THOM. I should think your interpretation is correct, that you may imagine a case where a minority could authorize it, but Judge Lovett dealt with that from a practical standpoint.

Mr. HUDDLESTON. I am informed that it is quite common that only a minority is present at some meetings.

Mr. THOM. You may rest assured that would not happen in the case of consolidation. The obligation to condemn and to purchase the outstanding stock is too much of an impediment in the way. I thought I had made a memorandum of a proposed amendment to that provision that Mr. Huddleston is now referring to. I do think there ought to be an amendment to that section for different reasons, and I have somewhere a draft of an amendment to it.

The reason it is objectionable, however, is that the words "in amount" there do not take care of the cases where there is no par-value stock, and with the permission of the committee I will submit to the chairman a memorandum of a proposed modification of that language to take care of that aspect of it. I find I can not put my hands on that modification at this time in the papers that are now available to me.

But the expression "majority in amount" seems to be objectionable from that standpoint, and my attention was called to that by Mr. Fullbright, of Texas, who was concerned with that aspect of the case. I think there is justification for some modification of that language.

Mr. HUDDLESTON. May I call your attention to the fact that subdivision 4, section 201, page 2, defines voting securities as including all outstanding shares of capital stock, whether with voting privilege or not, and all other outstanding securities the holders of which under the terms of a mortgage deed of trust or other contract have the right to vote upon the question to be determined. I am confronted by this conceivable difficulty: Subsection 3 of section 208 gives the control to the majority in amount of such voting securities. If the stock were worth 25 cents on the dollar, and the bonds were worth 100 cents on the dollar, the amount, of course, would be computed upon the par value of both, which would give the stockholder four times as much for the money he has in the enterprise as the bondholder. I merely call attention to that complexity, which seems to me to be somewhat difficult. I do not know how it will ever be decided.

Mr. THOM. That does not impress me as having very great difficulty, for the reason that ordinarily the voting power is possessed by the stock only, and to continue that to the fullest extent, modified only by the agreement that the stockholder has made with the bondholder that in certain contingencies he may vote, does seem to me to be unreasonable.

Mr. HUDDLESTON. One more point in that same connection. That gives the right to vote to preferred stock, which would naturally have more value per share than the common stock, and yet each share has the same voice.

Mr. THOM. Yes. I do not see any objection to qualifying the new power conferred upon the preferred-stock holder by saying he shall not get any greater voting power than the common-stock holder. I think those are all questions which will not be found serious from a practical aspect. I have suggested to the committee striking out the idea of anybody having a vote that does not have it under the plan of organization of the company. Granting that they do not do that, and they confer the power of voting on the others, I do not think it is an unreasonable provision to say those others who have the new power shall not exceed in voting power those who already have it.

Now, here is the provision that I have suggested as an amendment:

> The holders of the voting securities of any such carrier shall be held to have consented thereto, if a majority of the votes cast by the holders of such voting securities, present in person or by proxy at an annual or special meeting, are in favor of the adoption of the plan as approved. At such meeting each holder of shares of capital stock shall have the right to cast one vote for each share of the capital stock held by him, and the holders of other outstanding voting securities shall have such voting power as is conferred by the terms of the mortgage deed of trust or other contract which vested in him the right to vote. Notice of such meeting shall be given and such meeting shall be held and conducted in any manner lawful for an annual or special meeting, as the case may be, by all the stockholders of such carrier.

Of course, it may be proper for me to emphasize here the fact of the small amount of risk there is to a bondholder, anyhow. Under the provisions of this bill now his lien shall be preserved absolutely as it was. Ordinarily, he accepts his bonds on the property value underneath them. Of course, he may be somewhat influenced by good management of the road, but he takes the risk of change in management. He really relies on the property.

Now, if the new company must accept, as this bill provides, that indebtedness as its own, he is benefited by it, and the only reason for putting it in here at all, as I see it, is to preserve any right he has under contract, such as any mortgage or deed of trust. I would not advocate putting it in at all, except to preserve such rights as he already has.

Mr. HUDDLESTON. Suppose there is a lien for extensions and betterments, and other liens acquired, and both have been consolidated, who has the first lien?

Mr. THOM. I understand that is taken care of in this bill. There is a provision in this bill, section 211, page 12, the first paragraph of that section, reading as follows:

> Upon the effective date of the order of the commission in the case of a plan presented for a corporate consolidation or merger of two or more carrier corporations into one corporation, effected under the authority of this title, and except as restricted or limited in the original or modified joint agreement, or in the petition, or in the order of the commission—

Those are the exceptions. I have been pleased with those exceptions for the reason that it seems to me they take care of a good many troublesome situations. For example, suppose we have a carrier that is to be consolidated which has some income bonds out.

The right of the holders of those bonds is determined by the income of the company which issued the bonds. Suppose that company is consolidated with some other company. What is to be the situation of those incomes bonds, as to the income of the consolidated property? Are they to have the rights they had before consolidation? Is it to be confined to the property from which it had the right to resort for the payment of the income? Those are difficult questions. You can not limit or deal with them by legislation. But when you say they shall or may be provided for in the plan or in the order of the commission, you then put it in the power of the parties to arrange all those difficult questions by agreement in advance.

And it is the same way in the question that you have asked. Here is the property with an after-acquired mortgage. That probably means it was after-acquired by that corporation. It is acquired under this consolidation proceeding by another railroad. How far are those rights to extend? I think that those things may be determined by the plan in advance.

Mr. HUDDLESTON. Is not that a matter of contract between the carrier that executed the mortgage and the holder of it? How could the Interstate Commerce Commission defeat it?

Mr. THOM. They can not, so far as it is a matter of contract. So far as the contract will carry it out, they can not, but they can provide the means. For instance you find in paragraph (d) a provision that, except in so far as they may change by agreement:

> All debts, liabilities, and duties of each of the constituent corporations shall thenceforth attach to the resulting corporation, and become and be its debts, liabilities, and duties, and be enforceable against it to the same extent as if such debts, liabilities, and duties had been incurred or contracted by it.

Then there is the following clause in paragraph 2:

> In the case of any such consolidation effected under the authority of this title, the rights of creditors, and all liens upon the property of any of the constituent corporations shall be preserved unimpaired, and the respective corporations shall be deemed to continue in existence so far as may be necessary to preserve the same.

I believe that is as far as you can go in a contract with bondholders, and I think you will find them very well satisfied with it, especially as they get, under the terms of this bill, a very much greater credit behind the bond than they would have originally.

Mr. HOCH. Before you leave that let me recur for a moment to your suggested amendment to paragraph 3.

Mr. THOM. Yes, sir.

Mr. HOCH. I understood you to suggest an amendment to require a majority of the votes cast.

Mr. THOM. Yes.

Mr. HOCH. Now, with reference to bonds which vote you provide that they shall have the voting power provided for in the contract, but with reference to the stock you set up a hard and fast rule that each share of stock shall have one vote.

Mr. THOM. Yes.

Mr. HOCH. Why do you not leave the voting power of the stock to the ordinary rule?

Mr. THOM. You create a voting power here for the first time.

Mr. HOCH. Would not some of it have greater voting power than one for each share? That is conceivable?

Mr. THOM. It is conceivable, but you are readjusting the voting power to take care of that situation. If you confer a voting power upon stock that has not heretofore had any power to vote, you have to define the extent of it, the extent of the power which you confer. It occurred to me the best way was to say that each share of stock should have one vote.

Mr. HOCH. But you might do violence to the rule which exists in some of these corporations, in reference to the voting power of the stock.

Mr. THOM. You do do violence to that, and grant a new voting power to somebody who does not have it. Of course, if you say your common stock shall not remain unimpaired, but shall share with the preferred stock, which is now given a vote for the first time, you impair the voting rights of the common stock.

Mr. HOCH. I do not quite get that. As I understand it, this does not give to any stock any voting power which it does not now have.

Mr. THOM. I understand it does. I understand that under the definition you give to stock which never had a vote at all a direct vote on this question, and if you do that you have to define it somewhere. In doing that you impair the voting power of those stockholders who now have the exclusive voting power.

Mr. HOCH. Why is it necessary to change the voting power of those who already have a voting power? Would you do that with your proposed amendment?

Mr. THOM. I do not think it is necessary. You can do as you please about that.

Mr. HOCH. I just wanted to get the reason for it.

Mr. THOM. My reason for it is simplification. I think you can do as you please. You may say some may have such voting power as they have now, and others one vote to each share of stock.

Mr. HOCH. It struck me that it might lead to a good deal of dissension if a share of stock has the right to cast five votes on the matter of corporate management or some other question, but by your proposed amendment you limit it to one vote on consolidation.

Mr. THOM. I do; and I think there is good ground for differences of opinion, and perhaps the suggestion you make is a wise one. What I am trying to do is simply to bring out the fact that you must define the extent of the voting power you give for the first time.

Mr. HOCH. I appreciate the necessity of doing something there.

Mr. THOM. Doing that, there is no objection whatever to preserving to the fullest extent the voting power that now exists. I would not oppose that—in fact, I favor it. I think there is a good deal to be said about it. But bear in mind that every voting franchise that you confer upon a new constituency who are to participate in the determination of these questions, you thereby invade the field of the old stockholders. But I see no objection whatever to your suggestion that the present stockholders shall have the right to cast the same number of votes that they have in any election of directors, and that the new ones shall have one vote for each share of stock. I do not criticize that at all—in fact, favor it.

Mr. BURTNESS. As I understand it, you personally rather doubt the policy of extending the right to vote to those who have not had that right heretofore?

Mr. THOM. I do.

Mr. BURTNESS. Of course, that is in the bill.

Mr. THOM. That is in the bill, and I suggest that you change that. But, at the same time, there is a good deal to be said about giving them some right to a voice, because they have no lien upon the property.

Mr. BURTNESS. And particularly, I take it, because of the fact that, if we pass this bill, we give to the corporations in many cases powers which they do not already possess, and giving those corporations such additional powers, there may be considerable argument for giving the people who have their money invested in them a right to determine whether or not they will go into it.

Mr. THOM. I can not unqualifiedly condemn the proposition, but I do not see any necessity for it, and I would suggest that it be omitted.

Mr. BURTNESS. I want to clarify the record on a point that was discussed a short while ago, when I interjected the statement that I felt that the minority or the dissenting stockholders, under the terms of the bill as drawn, would have power to elect whether or not they want to participate in the consolidation. I refer, of course, to the paragraph in section 212 which gives to the minority stockholders and security holders 90 days before they have to give notice, in the event they are not willing to assent to participating in the consolidation to the same extent that the majority stockholders do. It occurs to me that, as a practical proposition, that does give to them the power of an election. I realize they have not the further right of election after they have once determined they want to get rid of their stock and to take their chances on condemnation, that after they find how much they are going to get, they have not then the further right to say they will not accept that, but would rather participate. Do I understand you to say that, as representing the carriers, you do not see any particular objection to giving them a further election after the condemnation proceedings have been gone through with? That is, if the minority stockholders are not satisfied with the price they get, if they are so dissatisfied with the price resulting from the condemnation proceedings that they would rather participate in the consolidated corporation on the same terms as the majority, they might still have the right to elect afterwards?

Mr. THOM. I merely qualify what I said in respect to that by this question which I have in my own mind: Whether or not the belated adoption of a purpose to come into the consolidation, and thus upset plans which have been made and consummated and crystallized on the basis of their refusal within 90 days to come in, would be desirable.

Mr. BURTNESS. And the practical situation would be this, if that were permitted, would it not, Mr. Thom: That the minority stockholders during that period of 90 days might say: Well, we might as well give notice we refuse to participate, and see how much we will be granted in condemnation proceedings. We are not taking any chances at all. We will go through those proceedings and we can then determine whether to come in with the majority or not. I was wondering whether it might not create more or less difficulty.

Mr. THOM. I think that is a very strong suggestion.

Mr. BURTNESS. I can not see that it would be particularly unfair to them to be compelled, within 90 days after the decision is made, to determine whether they want to join with the majority or whether they want to get the value of their stock, as the value would be determined in what would presumably be fair condemnation proceedings.

Mr. THOM. I think that is a very forceful suggestion, and I am glad you brought it out. In the hurry of discussion it escaped my attention, but it would undoubtedly have that effect. While I have no doubt, as previously stated, that the consolidated company would be glad of an opportunity to admit, if possible, the dissenting stockholder to the consolidation rather than to pay for his stock, yet, it seems to me, upon reflection, that it would be most objectionable to give the option to the dissenting stockholder, after the result of condemnation is known, either to demand admission to the consolidation or to accept the award, because it would simply encourage him to dissent, as he would lose nothing by it. When the suggestion of such an option was first made in one of the questions, all aspects of the matter did not occur to me at once, and I accordingly feel much indebted to Mr. Burtness for calling my attention to this aspect of the matter. I think it is no more unfair to the dissenting stockholder to require him, after 90 days of the right to do something else, to accept the award of the court, than it is to require the carrier to pay the award of the court, no matter what it is. Here we have a system which of necessity does not allow the carrier to withdraw if there is an excessive valuation, or one that it considers excessive. There never was a right on the part of the person whose property was condemned under any system of condemnation to withdraw because he was dissatisfied with what he could get from the court. He was always compelled to accept that, and this does not compel him any further.

Mr. BURTNESS. Just one more question to get the effect of the change in the legislative guide that seems to be given to the commission. If there had been the same kind of a legislative guide to the commission in the present law as is proposed in this bill, then I take it that in the so-called Nickel Plate merger it would have been the duty of the commission to have approved the merger, because, if I understand the facts correctly, the commission found that the merger was in the public interest, but it was denied.

Mr. THOM. In the public interest from a transportation standpoint.

Mr. BURTNESS. But it was denied largely because of the interest of minority stockholders and security holders, etc.

Mr. HUDDLESTON. I do not understand that to be correct, Mr. Burtness. I understand the commission was not satisfied with the financial status of the whole consolidation.

Mr. BURTNESS. The purpose of my question was not to go into the technical details of that decision, but simply to bring out, if I could, the difference in the language and the practical effect of the difference in the language.

Mr THOM. My judgment is that at the time of the Nickel Plate application a sound policy of law would have required that the Nickel Plate application should have been decided simply with reference to the public interest, and that all these dissenting and dissatisfied stockholders would have been relegated to the courts for a determination of their rights.

Mr. BURTNESS. And many of the important factors that entered into the decision of the commission in the Nickel Plate case would not have been before the commission for its consideration if they had been proceeding upon legislative instructions, such as are proposed in this bill.

Mr. THOM. That is the way I construe this bill, and I say that if my construction is erroneous I believe sound public policy requires that it should be made clear.

Mr. HUDDLESTON. With reference to these condemned shares of dissenting minority stockholders, as I understand the bill, they simply fall into the new corporation and cease to exist. Is that correct?

Mr. THOM. The shares?

Mr. HUDDLESTON. Yes.

Mr. THOM. It may not be that they cease to exist. They may be shares owned by the other corporation, and new shares may be issued.

Mr. HUDDLESTON. Perhaps I have not made myself clear. I have in mind certain instances where dissenting stock has to be condemned. That stock, after being condemned and being paid for, falls into the corporation and ceases to exist, does it not?

Mr. THOM. Ceases to exist in the hands of the outstanding holders. Now, whether it ceases to exist absolutely would be dependent upon the plan that was adopted and submitted to the commission.

Mr. HUDDLESTON. Would you say that the Interstate Commerce Commission has power to authorize a resale or reissue of that stock by the corporation?

Mr. THOM. I think the plan might provide that in the case of any stock that is condemned, and which is acquired by condemnation, the corporation should have the right to put it in its treasury and reissue it, on authority from the Interstate Commerce Commission.

Mr. HUDDLESTON. It is correct, I believe, that a corporation is not permitted to own its own capital stock.

Mr. THOM. It very frequently has its own capital stock in its treasury unissued.

Mr. HUDDLESTON. That, of course, is different.

Mr. THOM. It is in existence as stock, but is not out. That might be brought into the treasury of the company and held as treasury stock, subject to sale or reissue under the authority of the Interstate Commerce Commission, under section 20–A of the act.

Mr. HUDDLESTON. You think the stock would not be canceled and cease to exist?

Mr. THOM. It need not be.

Mr. HUDDLESTON. Merely by coming into the ownership of the new corporation?

Mr. THOM. I think the plan could provide otherwise. I think that is one of the great advantages of the plan, that it may deal with the various aspects of the financial status of affairs of the new corporation.

Mr. HUDDLESTON. At any rate, that stock does not come into the ownership of any outside parties, directly?

99790—26——28

Mr. THOM. It does not.

Mr. HUDDLESTON. If it is reissued, it goes first through the corporation?

Mr. THOM. Yes.

Mr. HUDDLESTON. Do you see any obstacle to allowing a minority stockholder, whose stock is being condemned, to say he will take a share in the original plan, in view of the fact that the stock does not pass to a third party?

Mr. THOM. I think the practical difficulty suggested by Mr. Burtnes is a very great one. I believe that if you say in your bill that the stockholders may dissent, and then take their chances on condemnation, and then have all the rights they would have had if they had not dissented, you will add to the number of dissentients very substantially. And if consolidations are desirable in the public interest, that would create an obstacle in the way, because you would unduly swell the number of uncertainties and the amount of financial obligations there would be.

Mr. HUDDLESTON. Of course, it is a measure of coercion to say they shall abide the decision. The question is whether or not it is more or less incompatible with the freedom of right which the owners of private property have. But they accept that argument as valid. Practically the same argument can be made in all condenmation proceedings with reference to the interests seeking to condemn. It is practically the universal practice to allow the party seeking to condemn to elect, after a valuation is placed on the property, whether they will pay that valuation.

Mr. THOM. Yes.

Mr. HUDDLESTON. Therefore, it gives them the opportunity to start proceedings they never carry through and do not intend to carry through. I had to go to the United States Supreme Court to do that with reference to one of my clients. They condemned the property which they had already taken without any process of law, and because they were dissatisfied with the award they simply sat back and said, "Get your money if you can."

Mr. THOM. A right in the applicant to elect has always been considered necessary in condemnation proceedings. That power has never been enjoyed by the person whose property was forcibly taken by the condemnation.

Mr. HUDDLESTON. For the reason that if he was not paid for it he could have his property, it was not necessary to give him that power.

Mr. THOM. Yes, sir.

Mr. HUDDLESTON. There was no alternative to give him.

Mr. THOM. He might be dissatisfied with the price.

Mr. HUDDLESTON. There was no alternative to give him.

Mr. THOM. Without destroying the condemnation proceedings.

Mr. HUDDLESTON. Yes.

Mr. THOM. I say that to give these people the alternative, after finding out by due process of law what the value of their property is, of accepting that or coming into the consolidation, would be giving them something that no person whose property is condemned enjoys under any system of condemnation, and it would have the practical difficulty that Mr. Burtness suggested of making an obstacle in the way of consolidation.

Mr. HUDDLESTON. Other condemnations do not involve the opportunity for election. If there is an opportunity for election to the corporation, then I should say the property owner should have his, but here is a power which, so far as I can see, might be exercised without any substantial right.

Mr. THOM. When you have dealt as fairly as you can with the dissenting stockholder, in the first place by giving him the right to vote, and in the second place by giving him if he is not satisfied 90 days to come into the consolidation or to have the value of his property paid him, the value to be determined by the court and which, in contemplation of law, must be adequate, have you not given him everything that is just and right in any reasonable system of consolidation?

Mr. HUDDLESTON. Well, answering your question, I will say that I have a very great veneration for the right of private property, and my inclination is that the right of the owner of property to hold it undisturbed and do whatever he chooses with it ought never to be interfered with except under imperative public necessity. When that is done he should be given every opportunity and every protection and every alternative consistent with public necessity.

Mr. THOM. My suggestion is that is not inconsistent with the public interest. In all the ages of English jurisprudence the right of condemnation has existed, and it has been held that no real private right in property is valid if you pay the holder of it its value as determined by the proper tribunal. Now, that is done here. To give him the alternative which would have the result of enlarging the number of dissentients to such an extent that the whole hope of consolidation might be destroyed or seriously interfered with, naturally, you have to determine whether it is in the public interest to do that. You can not justify consolidation on any ground except the public interest.

Mr. HUDDLESTON. That is a mere restriction on the opportunity of the majority. If we are to have voluntary consolidation only, if the public interest be paramount, the fact that the majority or minority are unwilling is of no moment.

Mr. THOM. You would not consider the rights of the majority only. You would consider the public interest. And if you adopt a system of voluntary consolidation you do it because you come to the conclusion that is the best way to get consolidation.

Mr. HUDDLESTON. We are not aiming at consolidation as consolidation by this bill. Otherwise, we would have it compulsory.

Mr. THOM. I do not think so.

Mr. HUDDLESTON. We are aiming at effectuating the will of the majority.

Mr. THOM. I do not think so.

Mr. HUDDLESTON. And the sole limitation on the will of the majority is that what they want must be within the law.

Mr. THOM. I do not agree with that point of view at all. I think if you adopt this bill and choose voluntary instead of compulsory consolidation you will announce two conclusions: First, that you consider consolidation in the public interest; and second, that policy can best be carried out by a system of voluntary consolidation rather than compulsory consolidation. That compulsion would involve too

much in the way of delay, in the way of opposition, in the way of carrying it into effect, in the way of getting the owners of property to put up the means to do it, and ultimately may require the power of the Government's own Treasury to carry the burden. I think you have declared, if you pass this bill in favor of voluntary consolidation, that the best way of accomplishing that is by voluntary methods. I think you have to take every proposition that is presented and start from that as a base.

Mr. NEWTON. There seems to be quite a difference of opinion between your construction of section 207 and that of Commissioner Hall, to which you have called attention from time to time. It would seem from the argument as to the desirability of one construction over the other that when the bill is finally written the chance for differences of opinion between yourself and Commissioner Hall should be eliminated by some sort of provision that should make it very plain. I would like to have you suggest for the committee when they take it up some amendment that would make very plain just what was intended.

Mr. THOM. Do you mean you would like me to present such an amendment?

Mr. NEWTON. Yes.

Mr. THOM. May I have the privilege of conferring with your legislative counsel in respect to that matter, so as to make it fit in with his draftsmanship of this bill?

The CHAIRMAN. You may.

Mr. NEWTON. I would like to have that done.

Mr. THOM. I will be very glad to do that.

Mr. NEWTON. There is one question that I am sure has been answered, but I have been away from the hearing during a portion of the time and have not had the benefit of hearing the answer. That is the legal authority in connection with the right of eminent domain as applied to this stock.

Mr. THOM. That has been decided by the Supreme Court of the United States, and I will put the authority in the record at this point.

Mr. NEWTON. I felt sure it had been covered, but it was during my absence.

Mr. THOM. That is decided in 203 U. S., page 372.

Mr. HUDDLESTON. What does that hold?

Mr. THOM. It upholds the power to condemn shares of stock.

Mr. HUDDLESTON. A matter I have been disturbed over is the prohibition of the fifth amendment against condemning property for anything except public use.

Mr. THOM. That case decides that question.

Mr. HUDDLESTON. It passes on that question?

Mr. THOM. Yes.

Mr. HUDDLESTON. Is that Connecticut case that was referred to?

Mr. THOM. It is the Offield case. I do not remember what State. I am informed that it is the Connecticut case. It decides the point you have in mind. The question arose whether it was for public use to condemn certain shares of stock, and the court held that it was.

Mr. HUDDLESTON. And they condemned for the benefit of a private corporation?

Mr. THOM. I do not remember. I am not definite enough on it to state that, Mr. Huddleston. I think you will find the case absolutely in point.

NOTE: The condemning party was the N. Y., N. H. & H. R. R. Co.

Mr. NEWTON. Has this consolidation provision under existing law been before the commission in any other case than the Nickel Plate merger?

Mr. THOM. They passed on it several times. They have used it several times. One was the acquisition of control of the Central Pacific by the Southern Pacific.

Mr. NEWTON. I recall that now.

Mr. THOM. There were a number of others.

Mr. NEWTON. Have any of their decisions gotten to the courts?

Mr. THOM. Not on that subject. You meant on that particular point?

Mr. NEWTON. Yes.

Mr. THOM. I do not think so.

Mr. NEWTON. I was wondering if we could have put in the record a citation of these various consolidation cases that the commission has passed upon, for reference purposes.

Mr. ALVORD. We have in our office an incomplete memorandum containing most of the decisions of the commission, which I expected to complete and furnish the committee. I will be very glad to complete it for printing in the hearings.

The CHAIRMAN. I wish you would do that.

(The memorandum referred to appears hereinafter, beginning on page 100.)

Mr. THOM. I wish now to advert to the scheme of condemnation. How much time have I?

The CHAIRMAN. Are there any other questions to be asked?

Mr. HUDDLESTON. I want some further information on the Interstate Commerce Commission feature.

Mr. THOM. I was coming to that. That was the reason I asked.

The CHAIRMAN. Can you return here to-morrow morning at 10 o'clock?

Mr. THOM. I will be very glad to.

The CHAIRMAN. We will adjourn until to-morrow morning at 10 o'clock.

(Whereupon, at 12 o'clock noon, the committee adjourned until to-morrow, Friday, June 18, 1926, at 10 o'clock a. m.)

RAILROAD CONSOLIDATION

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D. C., Friday, June 18, 1926.

The committee met, pursuant to adjournment, in the committee room, 226 House Office Building, Hon. James S. Parker (chairman) presiding.

The CHAIRMAN. The committee will come to order. Colonel Thom, you may proceed.

STATEMENT OF ALFRED P. THOM—Continued

Mr. THOM. Mr. Chairman and gentlemen of the committee, I feel that I must apologize to the committee for the great length of time I have consumed in this discussion. I can only say that I hope the committee will find in the importance of the subject and in its novelty and in its gravity a reason that will somewhat justify the length of time that I have taken. I wish to hurry through as much as I can, and perhaps in doing that I may omit some things that ought to be considered.

I wish to call attention at the opening of this session to the subject which we were discussing somewhat at the last session, namely, the designation of the Interstate Commerce Commission as a board of appraisers to report on the value of the holdings of dissenting stockholders. At the outset of that discussion the question naturally arises whether there is any power in the Congress to adopt any method which does not involve trial by jury, the Constitution requiring that in suits at common law the right of trial by jury shall be preserved. Without going at length into that question, I wish to say that we have given it very earnest and elaborate consideration, and are convinced that there is no necessity for a provision for trial by jury in a condemnation proceeding. When I say "we have" I mean the law committee of the association, and, as I explained, that law committee consists, generally speaking, of the general counsel of nearly all of the railroads of the United States.

I would like to have printed in connection with what I have said the opinion which Mr. Walker D. Hines has given on that subject, in which he has entered into quite an elaborate discussion of the authorities. I do not think it is necessary to take the time of the committee to read it, but will ask that it be inserted in the record.

Mr. HUDDLESTON. That is on the point of whether or not a jury trial is required?

Mr. THOM. Yes.
The CHAIRMAN. It may go in the record.
(The document referred to is as follows:)

OPINION OF WALKER D. HINES AS TO WHETHER TRIAL BY JURY IS CONSTITUTIONALLY NECESSARY IN PROCEEDINGS TO CONDEMN THE SHARES OF STOCKHOLDERS WHO DO NOT ASSENT TO A CONSOLIDATION.

The view I had expressed to Mr. ——— on this point was rather a preliminary suggestion than a considered opinion. On examining my file I decided to make a more careful study before writing you. As a result of that further study, I have formed the definite opinion that trial by jury is not a constitutional necessity in a railroad consolidation statute providing for condemning the stock of dissenting stockholders.

I

The Supreme Court of the United States has sanctioned the enforcement of condemnation statutes whose constitutionality was vigorously assailed, notwithstanding the fact that such statutes did not permit resort to common-law juries, but provided other methods of ascertaining and fixing the compensation which should be made to the property owners.

In Shoemaker *v.* United States (1893) (147 U. S. 282), the court upheld the complete enforcement of an act providing for condemnation of land for Rock Creek Park and the ascertainment of the value of the land by three commissioners. The constitutionality of the statute was vigorously and persistently assailed. The court could not have upheld the statute as constitutional if it had believed that the seventh amendment to the Constitution required the ascertainment of the value of the land by a common-law jury. I do not find that in the numerous reasons assigned for the unconstitutionality of the statute, the failure to permit a common-law jury was specifically set forth. But the court could not have upheld the statute if it had believed that such a jury was a constitutional necessity. Besides the specific point was in the mind of the court and actually passed upon. One of the errors assigned was the failure of the lower court to administer to the appraisers a certain form of oath. The Supreme Court pointed out that such form of oath "treats the case as if it were one before an ordinary jury, whose action is determined by the evidence adduced," whereas the lower court regarded the functions of the appraisers as including their own judgment, and their inspection of the land as well as the evidence adduced (p. 303). It would not have been impossible for the Supreme Court to take this view if it had believed the seventh amendment required a common-law jury, as it would have been impossible for the court in that event to uphold this statute at all.

In Bauman *v.* Ross (1897) (167 U. S. 548), there was a vigorous attack upon the constitutionality of an act providing for condemnation of land for streets in the District of Columbia. The act provided for the appointment of a jury of seven. Objection was made that the act committed the assessment of benefits upon lands to "the same jury" which estimated the compensation for the lands taken. The Supreme Court overrules this objection and said:

"Some confusion has perhaps arisen from designating the tribunal of seven men, which is to estimate the damages and to assess the benefits, as 'a jury,' when it is in truth an inquest or commission, appointed by the court under authority of the act of Congress, and differing from an ordinary jury in consisting of less than 12 persons, and in not being required to act with unanimity. * * * By the Constitution of the United States, the estimate of the just compensation for property taken for public use, under the right of eminent domain, is not required to be made by a jury; but may be intrusted by Congress to commissioners appointed by a court or by the Executive, or to an inquest consisting of more or fewer men than an ordinary jury." (Pp. 592, 593.)

The court could not have unheld and enforced this statute except on the view that the seventh amendment did not require a common-law jury in such a proceeding. Effort was made in the Beatty case, infra (203 Fed. 620), to distinguish this case because there was no specific contention before the court that the act was unconstitutional because in conflict with the seventh amendment. But it remains true that the court could not have enforced the act if it had believed the seventh amendment applied, and the language the court used showed that it definitely entertained the conviction that a common-law jury was not required in such a proceeding.

II

Moreover, there have been repeated observations by the United States Supreme Court which clearly indicate a settled conviction by the court on this point, even if sometimes dicta.

In Kohl *v.* United States (1875) (91 U. S. 367) the question arose whether the United States circuit court had jurisdiction, under the judiciary act of 1879, of a proceeding to condemn land for a post office, such judiciary act having conferred upon the circuit courts jurisdiction of suits at common law when the United States, suing under the authority of any act of Congress, is plaintiff. The court held that the circuit court had jurisdiction. The court's reasoning was that the right of eminent domain always was a right at common law, and that this was true even though it was not enforced through the agency of a jury, because the question whether it was or was not so enforced was immaterial. The court held that it was equally immaterial that Congress had not enacted that compensation for the post office should be ascertained in a judicial proceeding, and that ascertainment was in its nature at least quasi-judicial. These observations certainly forecast the view on the part of the court that an ordinary common law jury is not an indispensable feature of a constitutional condemnation proceedings under the Federal statute. It is noteworthy that Mr. Justice Field dissented, one of the grounds in his dissent being that if the proceedings were a suit at common law then the intervention of a jury would be required by the seventh amendment to the Constitution.

In United States *v.* Jones (109 U. S. 513, 519) the Federal Government proceeded to condemn land for the Army and used the State machinery for the purpose, this being provided for by the Federal statute. It was objected that the Federal Government had no right to exercise its power of eminent domain through the agency of the State. The court denied this contention, and in the course of its discusion said:

"The proceeding for the ascertainment of the value of the property and consequent compensation to be made, is merely an inquisition to establish a particular fact as a preliminary to the actual taking; and it may be prosecuted before commissioners or special boards or the courts, with or without the intervention of a jury, as the legislative power may designate. All that is required is that it shall be conducted in some fair and just manner, with opportunity to the owners of the property to present evidence as to its value, and to be heard thereon. Whether the tribunal shall be created directly by an act of Congress, or one already established by the States shall be adopted for the occasion, is a mere matter of legislative discretion."

I have already referred to the Shoemaker case (147 U. S. 282), where the court, in upholding the statute, specifically pointed out that an ordinary common law jury was not contemplated but an essentially different agency, to wit, appraisers who were to act upon their own judgment as well as the evidence adduced by the parties. This language, considering what was involved in the case, is really more than a dictum, and amounts to a direct holding.

I have also referred to the Bauman case (167 U. S. 548), where the court, in upholding the statute, took pains to point out that it contemplated a form of jury "differeing from an ordinary jury in consisting of less than 12 persons, and in not being required to act with unanimity."

In the face of such expressions by the Supreme Court, amounting to direct decision in the Shoemaker case and virtually to that in the Bauman case, since in both statutes were upheld, which would have been void if the seventh amendment controlled, it seems to me we can count with great confidence upon the Supreme Court holding that provision for a jury trial would not be requisite in the condemnation of stock of dissenting stockholders.

III

Perhaps the case which has caused the most doubt on this matter has been Beatty *v.* United States. (C. C. A. 4th Circuit, 1913; Pritchard, Smith, and Dayton, J. J., 203 Fed. 620.) The Government sought to condemn land for

the use of the Army, the proceeding being conducted pursuant to the Federal statute in accordance with the law of the State, and therefore the damages were assessed by commissioners under the Virginia law, Beatty moved for a jury and the circuit court of appeals held that under the seventh amendment the landowner could not be deprived of the right at some stage of the proceeding to have the question of just compensation determined by a jury.

The most striking feature of this decision to my mind is the studied way in which it seeks to set the United States Supreme Court right as to the matters dealt with by the latter in the Kohl case, supra (91 U. S. 367). The Kohl case had held that the right of eminent domain always was a right at common law. The circuit court of appeals explains that this was not the case. Perhaps superficially the Kohl case might be regarded as inconsistent in that it held that the proceeding to condemn was a suit at common law, and by its dictum implied that, notwithstanding the seventh amendment calls for the preservation of right of trial by jury in suits at common law, such a jury was not requisite. This apparent inconsistency will be explained below. But the circuit court of appeals in the Beatty case, appears to fall into the opposite inconsistency, which it seems to me is not susceptible of explanation, in holding that a condemnation suit is not a suit at common law, but that nevertheless there must be an ordinary common law jury because the seventh amendment guarantees such a jury in suits at common law. In my judgment, the Beatty case in unsound in its reasoning, is fundamentally opposed to what appears to be the settled conviction of the Supreme Court, and is opposed also to what appears to be the repeatedly expressed conviction of Congress as to what is constitutionally permissible in condemnation proceedings.

The Supreme court denied application for certiorari in the Beatty case, upon the ground that the question was not ripe for consideration by the Supreme Court, since the ordering of a jury was a mere interlocutory step, and the jury may award less damages than the commissioners in which event the United States would not be prejudiced. (232 U. S. 463.)

Two other Federal court cases, decided by the same judge, may be cited as being in line with the Beatty case, but it is clear that although that judge expressed the same view as was expressed in the Beatty case, such view was not necessary to a decision of the case. The decisions referred to are Filbin Corporation *v.* United States. (District Court, E. D. South Carolina, Smith, J., 1920; 265 Fed. 354; 266 Fed. 911.) These two decisions arose in the same case, the latter being in the nature of a reconsideration of the motion involved in the former. The Lever Act authorized the President to requisition supplies. If the owner was not satisfied with the compensation fixed by the President, he should be paid 75 per cent thereof and should be entitled to sue the United States to recover any balance of just compensation, jurisdiction of such suits being conferred on the district court. The plaintiff brought suit accordingly and moved for a jury. The Government contended that the act must be strictly followed, and since it did not expressly authorize a jury, but conferred jurisdiction upon the court itself, no jury could be allowed. This would seem to be a wholly unreasonable position. When a statute confers jurisdiction on a court there should be no implication that a jury is prohibited. The district court took this view, and said that the order of a court went further, which was unnecessary, and held in both its decisions that a jury was required by the seventh amendment. On this unnecessary ground, the court's reasoning is unsound, and I do not believe the United States Supreme Court is going to adopt it in place of its own long settled and frequently expressed conviction.

In Great Falls Manufacturing Co. *v.* Garland, Attorney General (circuit court, district of Maryland, Morris, J., 1885; 25 Fed. 521) there was a proceeding to condemn land for water rights to build a dam across the Potomac, pursuant to an act authorizing an appraisal of the property by three appraisers. The landowner contended that the statute deprived him of his constitutional right to a jury trial of the amount of the compensation and hence sought to enjoin proceeding under the act. The injunction was denied, the court saying:

"With regard to the claim that complainant is entitled to have his compensation assessed by a jury, it has been so often decided that this is not a constitutional requisite that it can not be any longer regarded as an open question."

IV

It is interesting that Congress has frequently proceeded on the view that the seventh amendment does not require a common-law jury in condemnation proceedings. The statutes upheld in the Shoemaker and Bauman cases, supra, as well as the statute upheld in the Great Falls Manufacturing Co. case, supra, are striking instances of this fact, and both these statutes were upheld by the Supreme Court. Perhaps a historical review of the provisions of Congress from the beginning of the Government in condemnation matters would be worth while, but I have not undertaken to make it.

V

It seems to me the true way to reconcile the seventh amendment with the view expressed in the Kohl case. supra (91 U. S. 367), that a condemnation proceeding is a suit at common law is this: The seventh amendment provides that in suits at common law the right to trial by jury shall be preserved. This clearly indicates the purpose merely to preserve, and not to extend, the right of trial by jury in suits at common law, as such right was understood and applied at the time of the adoption of the seventh amendment. If at that time there were suits at common law in which trial by jury could not be demanded, the seventh amendment would not apply, because to make it apply in such cases would be not to preserve, but to enlarge or extend the right of trial by jury, and this was not intended. As pointed out by the Supreme Court in the Kohl case, many civil as well as criminal proceedings at common law were without a jury.

It is stated in Lewis, on Eminent Domain (Vol. 2, p. 922):

"In the absence of any express provision on the subject, the authorities almost uniformly hold that it is not a matter of constitutional right.

"The line of reasoning upon which these decisions are founded is that before any of our constitutions were adopted it had been the practice in America and England to ascertain the compensation to be paid for property taken for public use by other agencies than a common-law jury; that this practice was well known to the framers of those constitutions and that presumably they did not intend by any general language employed to abrogate a practice so universal and of such long standing and against which no complaint existed."

Willoughby says, in his Constitutional Law (vol. 2, sec. 416, p. 808):

"The right of trial by jury provided for in the Constitution applies only in the Federal courts, and in them it applies only to those cases, in which, by common practice at the time the Constitution was adopted, it was employed in the colonies and in England."

An interesting case developing the history and philosophy of this matter is Scudder *v.* Trenton Delaware Falls Co. (1832). (1 N. J. Equity 694.) This was a bill to restrain the company from exercising its charter power to condemn land, the charter providing for the appointment of three appraisers to make an award. One of the grounds of attack was that complainant was deprived of an opportunity to have the compensation ascertained by a jury, the State constitution providing that "the inestimable right of trial by jury shall be and continue without repeal forever." Injunction was refused.

On the contention that the Constitution required a jury trial, the court held it was important to inquire into how trial by jury was exercised in the colony at the time of the adoption of the Constitution, since trial by jury, so far as it had been adopted or acted upon in New Jersey at that time, was a part of the common law. The court found that in 1681 certain lands were taken for public highways, the owners being allowed reasonable satisfaction in lieu thereof, at the discretion of certain commissioners; and that these commissioners were appointed by the same assembly which passed a general and fundamental act, in many respects corresponding with a bill of rights, declaring that no inhabitant should be deprived of his property without due trial "by 12 good and lawful men of the neighborhood, first had, or according to the new laws of England." The court indicated that the probable explanation was that the valuation to be made for private property taken for public use was not considered a case in which a jury was indispensably necessary according to the laws of England. It appeared

that in 1765 provision was made by law for the assessment by commissioners of damages to persons through whose lands certain "straight roads" might pass. The court added:

"Judging from what I have been able to find, I can not come to the conclusion that in 1776, when the Constitution was adopted, the trial by jury was extended to this kind of assessments, and that it was, therefore, the common law of the land."

VI

It is important in this matter not to permit ourselves to be too completely engrossed with mere abstract principles, or the application of these principles to entirely different states of cases. What we have to deal with here is a new and highly special subject matter. The railroads of the country have developed into a great quasi public enterprise. It has been found necessary in the public interest to regulate and deal with them in ways which never were dreamed of at common law. The services rendered by railroad companies are habitually taken by the public for a just compensation with which a jury has nothing to do. The rates are fixed by commissions, State and Federal. The interests of all stockholders are affected in the most fundamental manner by what is done by these commissions, which exercise a virtual power of life and death. The only protection accorded is that given by the courts in proceedings in which juries are never impaneled. Further, Congress has provided for a valuation of the railroads by the commission, this valuation to be prima facie evidence. There may be certain judicial relief, but no one, of course, expects that the courts will hold that the Constitution requires that a jury be part of the tribunal which deals with valuation.

Of course, this valuation is for the purpose of fixing rates, and compelling the company to render service at rates based upon a value thus fixed of its property may not be technically the same thing as taking the company's private property for public use. Yet there is a certain practical analogy. It would be remarkable if the courts, which see this method of dealing with the property of stockholders, and with the modification of the value of the property of stockholders going forward day by day, should find themselves seriously disturbed if Congress should provide for a correspondingly rational and practical way of ascertaining the value of the stock of dissenting stockholders instead of plunging such stockholders and indeed the whole railroad situation into an endless and hopeles mass of jury trials.

A great public policy is involved in effectuating consolidation of the railroads. The ascertainment of the value to be paid to dissenting stockholders will be a mere incident in carrying out that policy. Even if the Supreme Court of the United States had not already thoroughly committed itself on the general doctrine that the Constitution does not require a jury trial in condemnation proceedings in general, I do not believe that court would hold that a proceeding to place a value on the stock of dissenting stockholders as an incident to bringing about railroad consolidation is a "suit at common law," in which there is occasion for "preserving" the right of trial by jury. No such proceeding was ever dreamed of at common law; no trial by jury was ever had in any such proceeding at common law; and there is no right of trial by jury to be "preserved." A "jury of the vicinage" would be unattainable where the property to be valued extends halfway across the continent.

The Supreme Court has evinced a highly practical attitude in upholding Federal legislation relative to railroad regulation. If Congress adopts the sensible view that trial by jury would be hopelessly out of place and a source of injustice and inequality, confusion and delay in railroad consolidation proceedings, the Supreme Court is not going to defy that practical view and insist upon substituting for it an absurdly technical, archaic and unworkable plan.

Mr. MAPES. Do you make a distinction between jury trials and trials by court?

Mr. THOM. Between a jury trial and the ascertainment of the value through a board of appraisers. The question was whether or not this Congress has the power to have the matter of value referred to the Interstate Commerce Commission instead of to a jury.

Mr. MAPES. When you speak of a jury, you mean a trial in court?

Mr. THOM. I mean a regular jury trial, what is known to the law as a jury trial, where you empanel men and have a trial in court of the question by a jury.

Mr. MAPES. Do you eliminate also the trial before the judge without a jury?

Mr. THOM. No; we do not do that. This requires that.

Mr. MAPES. You do not go so far as to hold that we could deny the minority stockholders the right to go into court?

Mr. THOM. No; I insist that ought to be done.

Mr. MAPES. You only say that the minority stockholders are not entitled to a trial by jury?

Mr. THOM. Neither the minority stockholders nor the condemning party is entitled to a trial by jury in that proceeding. Of course, I am proceding on the theory that there will be a court proceeding.

Now, the novelty of that proceeding is worthy of note in that in every other condemnation proceeding there is a power on the part of the applicant for condemnation to abandon the condemnation proceedings if the award is in its opinion excessive. There can be no such power here, as a practical matter, for the reason that under the scheme of this bill consolidation may have taken place in the 90 days before there is a knowledge of whether the dissenting stockholders are willing to become a part of the consolidation. It certainly is likely to have taken place before there can be an ascertainment by court proceeding on the value of the dissenting stock. So that, if the corporation could abandon its condemnation proceedings when it finds it is discontented with the amount, the dissenting stockholders would have no rights at all. Therefore, it is necessary to change that proceeding so as to provide that when stock is condemned in such a proceeding the ultimate finding is binding on both parties.

Consequently, I took very considerable exception to a provision in Senator Cummins's bill which made the findings of the Interstate Commerce Commision conclusive, as it was originally drawn. He has abandoned that idea, I think under the force of the argument, but at one time he proposed to make the findings of the Interstate Commerce Commission conclusive. That would have practically prevented this judicial inquiry to which Mr. Mapes has referred, and would also make no provision whatever for any check upon the findings of the Interstate Commerce Commission in any court where the matter would ultimately come. The court would simply have to enter its order on the finding of the Interstate Commerce Commission, and there would be no hearing in court. And, moreover, there would be no check for the protection of the condemning party in the event that the award of the commission was considered objectionable or excessive.

I think, therefore, it is fair and doubtless necessary that when the report of the commission comes in there should be a judicial proceeding and check on it, so that by a judicial method the determination of the amount may be guarded. There would be, at least, that chance of avoiding an unconscionable award. I can readily understand the obstacle which would be in the way of consolidation if there was necessarily put upon the applicant company the burden of purchasing the stock of the dissenting holders

or to condemn it, and there was no judicial determination at all as to what it would have to pay, but it would have to pay anything the board of appraisers determined. There would be such a danger in the immensity of the obligation that might be put upon the applicant company that it would stop consolidation. The company might conclude that it could not face that danger. The least protection that would seem at all reasonable would be the check of a judicial tribunal and inquiry by judicial method into the report of the commission.

Mr. MAPES. You say it is fair to deny the parties the right of a jury trial?

Mr. THOM. I think it is essential that you should. A jury trial would not afford any real measure of the value of the security. The jury would not be so constituted that they could take in the great questions that would be involved in the valuation of the stock. You would have an immense risk of the question being determined on principles that were not business principles, in the way of sympathy for the holders of the dissenting stock, and altogether you would be introducing into what is a very essential business matter to be handled on large and consistent principles, the uncertainty of jury trial, and that uncertainty might be large enough to destroy the whole purpose of your act.

Everyone who approaches the subject from the practical standpoint of advising in regard to possible consolidation has come without exception to that conclusion. They think it would be destructive of the whole scheme if the carriers had to agree in starting the consolidation to pay anything that a jury anywhere that might get jurisdiction would determine, when you have got a body that has been valuing these railroads now for 13 years, with a vast fund of knowledge on the subject, trained in that particular matter, and that body is better equipped, in our judgment, to arrive at just conclusions of the value of these securities than any other body in the country.

I note the apprehension that Mr. Commissioner Hall had that this bill would in some way—it seems to me contrary to the express terms of the bill—constitute the Interstate Commerce Commissioners as persons a board to pass on this question, involving the taking of oaths by each person in every case. I do not so construe this bill. I think it is plain that when it says "appoint the commission" it means the commission; that they are to value this stock just as they would under the valuation method employed in the valuation of railroads, and act as the commission. The mere fact that they are delegated by a court in the proceeding, and they have to report back to the court, does not in any way change the character of their function. They function as a commission, in my opinion.

Mr. HUDDLESTON. Is the practice any different from the practice of appointing members of a board of appraisers?

Mr. THOM. Except that they are appointed as individuals, but they can report by a majority vote.

Mr. HUDDLESTON. The common provision on that subject is that the court shall appoint a board of three appraisers. The same language is here used with reference to the Interstate Commerce Commission, and I wondered whether the status of the individual commissioner would be in any way altered by their appointment as appraisers.

Mr. THOM. It seems to me clearly not. Here is a commission that is recognized by the law and exists now as a commission. Your bill says you appoint that body already in existence, in a sense an incorporated body, incorporated by your statute. You appoint that body to inquire into and report the value of this stock, just as your statute in section 19a requires the Interstate Commerce Commission, not as individuals, but as a commission, to value the railroads.

The CHAIRMAN. There is no question in your mind but an amendment would make that perfectly clear?

Mr. THOM. I was going to say if there is any doubt about it I think an amendment could easily cure it.

Mr. HOCH. I understood Commissioner Hall had some doubt of the power to constitute the commission an officer of the court. If there is any question about that an amendment would not cure it.

Mr. THOM. Of course, there is power. I think that is so remote that, interested as I would be in the success of consolidation, I would have no apprehension whatever on that subject. Moreover, if there is any doubt now on the other matter that was referred to by Mr. Commissioner Hall, as to the method of procedure by this commission, whether or not they could use the agencies which they now use in determining questions referred to them, that matter can be easily cured. I do not think there is any doubt about the power to proceed as a commission and through their regular agencies, except this doubt: I observe from the interstate commerce act there are two provisions which affirmatively authorize them to use examiners on particular subjects. Now, it may be that would be regarded as a lack of authority to use examiners except on those subjects. If that be true, it is easily enough amended. Only, if you do amend it in that respect, great care must be taken to see that your amendment constitutes due process of law.

Mr. HUDDLESTON. Subsection 4 of section 213 provides that whoever acts as board of appraisers shall have the powers and duties of a master in chancery. It would seem to me that only in such cases as a master in chancery might delegate his functions to some one else could the commission delegate them.

Mr. THOM. I do not accept that view. Of course, I see the force of it, but I do not accept that view. I think that, as Mr. Commissioner Hall has suggested the possibility of it, and as Mr. Huddleston seems to think there may be also some doubt about it, I would suggest that you make it certain in your bill, so as to be certain that the power exists for them to act as the commission and to use the methods provided and use those methods consonant to due process of law. By that I mean that hearing is a part of due process of law, and whoever makes the investigations would have to consider very carefully whether or not they should be required to proceed by due process of law in hearings, as well as the commission in ultimately determining the facts.

Mr. HUDDLESTON. What do you think of the question of the venue of these proceedings? It is provided in this bill they must be brought in the State in which the railroad is chartered. Of course,

you might have a corporation chartered in one State and performing no function in the State, and having no stockholders there. What would you think of requiring the proceeding to be brought in some State in which some of the stockholders reside?

Mr. THOM. I do not think that is important. I mean to say that I do not think it is important to interpose an objection to that. I do not believe it will be found, though, in practical operation necessary to do that. It looks to me like the venue is pretty well placed here. Most of the railroads would have their established situs, and it is almost impossible to conceive that in that State there are not some stockholders; but if that should be true the hardship would not be very great, inasmuch as all would come into one suit anyhow, and they could come from other States. I would have no objection to a limitation such as you have indicated, if that is thought to be fair.

Mr. HUDDLESTON. I was trying to suggest that there ought not to be in the measure any element that would coerce any citizen or stockholder into consolidation. In other words, the machinery ought to be absolutely fair as between the parties.

Mr. THOM. I can agree with that proposition. I think if there is anything unfair in the machinery that is now in the bill—and that I do not believe it to be the case, and the law committee of which I am chairman does not believe it to be the case—but if there is, it ought to be made fair.

Mr. HUDDLESTON. If the bill is to be made favorable to either party, I should lean to making it favorable to those who desire to preserve the existing status, the present condition, rather than those who are seeking to change the condition.

Mr. THOM. The justice of that suggestion would depend on whether or not consolidation is desirable in the public interest. If consolidation is desirable in the public interest, then the public interest should prevail, and everything that is fairly reasonable should be done in favor of that proposition, rather than in preserving the status which Congress says is not in the public interest.

Mr. HUDDLESTON. Congress has not said that, as I understand it, and I do not understand that consolidations would be always in the public interest. For instance, many consolidations may be against the public interest.

Mr. THOM. Not if this proposal is carried out.

Mr. HUDDLESTON. Of course, it leaves the Interstate Commerce Commission to decide, but many proposed consolidations might be against the public interest.

Mr. THOM. But you never can take anybody's property until that proposition has been determined to be in the public interest. That is absolutely a condition precedent to taking anybody's property. Now, having had a hearing on that question, and everybody interested appearing, the governor of every State and everybody else, the dissenting stockholders and everybody else having an opportunity of presenting their views upon what the public interest is, and it is determined to be in the public interest, then I think that your method ought not to favor the existing status, but ought to favor the changed status, which has been determined to be in the public interest.

Mr. HUDDLESTON. There seems to be a thought afloat that consolidations are desirable just because they are consolidations; that they would simplify operation and reduce the number of systems, and that for those reasons they would be desirable.

Mr. THOM. That, of course, is a matter to be determined under this proposed bill by the Interstate Commerce Commission. That is one of the considerations which somebody may want to bring to the commission, and I do not know whether they will be able to sustain it or not. But this bill, as I read it, does not indorse any such idea or view of consolidation.

Mr. HUDDLESTON. If I were writing this bill, I would make consolidation not only a matter of mere public interest, but economy and efficiency in service, and something different from the mere question of public interest. I have in mind the proposed Nickel Plate consolidation, attractive to the imagination, but how it could be conceived that economy or efficiency of service would be promoted by it is rather a difficult thing for me to understand.

Mr. THOM. There was evidence on that subject.

Mr. HUDDLESTON. They indulged in predictions and speculations about this, that, and the other, that obviously were mere hopes and desires and dreams.

Mr. THOM. I think, Mr. Huddleston, if you will permit me, that you have got to avoid trying to put them in too much of a strait-jacket. It is an economic question. There is always danger in putting an economic condition in a strait-jacket.

Mr. HUDDLESTON. Do you not think the commission should be required, as a condition precedent to consolidation, to find that either economy or efficiency will be promoted by it?

Mr. THOM. I think they have got to find under this bill that public interest is promoted, and then Congress, under the declaration of policy, will indicate the items of public interest which are to be taken into consideration. Here it is, if you will allow me to read it:

> It is hereby declared to be the policy of Congress, in order that an adequate and efficient transportation service may be maintained in the United States and necessary weak and short lines be preserved, to authorize and encourage the unification, through any method specified in sections 203, 204, and 205 of this title, of the property of carriers into a number of strong and efficient and well-balanced systems which will, as far as practicable, maintain the existing routes and channels of trade and commerce, and preserve, as between themselves, the advantages of effective competition in service, so that the properties of the carriers in each system shall ultimately be managed and operated and owned or controlled by a single corporation, economy be promoted, unnecessary duplication and wasteful competition eliminated, better service afforded, and the traffic moved at the lowest rates compatible with the maintenance of adequate and efficient transportation service. In order that this policy may be carried out, the unification of the properties of carriers, directly or indirectly, otherwise than in accordance with the provisions of this title, after the enactment of the railroad consolidation act of 1926, shall be unlawful.

There it is.

Mr. HUDDLESTON. The question of economy is regarded there. It relates to economy and efficiency.

Mr. THOM. Yes.

Mr. HUDDLESTON. But items such as taking care of weak lines and continuing business routes, and various other things like that, seem to me do not warrant such a thing as consolidation.

Mr. THOM. There are a good many other things in there than that.

I wish to say, in connection with this creation of the Interstate Commerce Commission as a board of appraisers, that I shall at the proper time ask the committee to consider an amendment of the bill by striking out the words " determine and report to the court the value of such securities " and insert " inquire into and report to the court the value of such securities," so that the determination shall be left, as I think it is intended to be in the bill and as I think it ought to be, with the court, and you get the determination of value in the order of the court.

Now, having put that new duty on the commission, and in consideration of the number of times that you have imposed additional duties upon the commission, I hope the time will soon come when you gentlemen, in the performance of your duties, will consider the reorganization of the commission's system in the country. I am not a believer in reorganizing it along the line of requiring commissioners to be chosen from certain designated territories. I think they ought to be chosen for their fitness. But I do believe that in a country as large as this, having such diversified communities, many of them across the continent from the Capital, it is only fair that you should bring the administration of this law closer to the homes of the people. The Association of Railway Executives is committed to this policy. We asked you to do that in 1919.

Mr. NEWTON. Do you mean regional commissions?

Mr. THOM. Regional commissions, the members of which shall live in their respective regions. The members of the regional commissions should live in their respective regions, should be familiar by daily contact with the needs of their respective regions, should understand them, and be stationed where the people who want the service of the Government will be able to get it at their doors, in a sense, certainly, to a far greater degree than they are getting it at their doors when the commission is located here in Washington.

Now, I shall not undertake, although I have it drawn up here the way it was presented to this committee in 1919, to go at length into this, because of the time it will consume, but I am at your service at any time you may think the importance of the subject requires the presentation of details and suggestions in outlining the idea that there shall be a commission at Washington; that the Congress will divide the United States into a given number of regions; that the President shall appoint and the Senate shall confirm such number of regional commissioners as Congress may determine for each of those regions, who shall live there and have their principal offices there.

Mr. NEWTON. Is it your idea that this regional commission would not only pass on the general rate questions, but would also carry out the other administrative features of the interstate commerce act?

Mr. THOM. I was coming to that. I was endeavoring to give with some care the jurisdiction of those commissions. I would suggest that each of the regional commissions should have primary jurisdiction of all complaints originating in their districts and should hear and determine the same, and should perform such other duties as are imposed by law upon the Interstate Commerce Commission or as the Interstate Commerce Commission shall from time to time by general or special order direct. Whenever a cause of action shall include carriers in more than one district, a complaint may be filed

in any district in which any of such carriers operate, and the Interstate Commerce Commission may assign from the regions or various districts in which the lines of such carriers are located members of the commission in the various districts to constitute a commision to hear and determine such cause of action in the same manner and to the same extent as a regional commission might do.

Then I would suggest that whenever a regional commission shall make a report or order upon any complaint or upon any matter referred to or pending before it, there shall forthwith be sent by mail to the Interstate Commerce Commission and the parties to such proceeding a copy of such report or order, and such parties shall have —— days thereafter within which to file exceptions thereto. In case exceptions are so filed, or in case the Interstate Commerce Commission shall so require, all papers and the entire files of said regional commission pertaining to such matter shall be transmitted to the Interstate Commerce Commission, that is, the original records; but shall be returned to the regional commission when no longer needed by the Interstate Commerce Commission for its purposes. If exceptions are filed the Interstate Commerce Commission shall hear the parties thereto, but the hearing shall be confined to such exceptions, unless the Interstate Commerce Commission shall direct that matters not covered in such exceptions shall be included in such hearing.

I think it is easy enough to define the jurisdiction, and I think you gentlemen are going to feel the pressure of public opinion after a while to carry the administration of that law closer to the people.

Mr. MAPES. Is it your idea that this regional commission shall be supplemental to the main Interstate Commerce Commission in Washington, and not interfere with the organization of the Interstate Commerce Commission here?

Mr. THOM. Composed of different people. The Interstate Commerce Commision here would, in a measure, bear the same relation to these regional commissions as the United States Supreme Court does to the inferior Federal courts.

Mr. MAPES. That is what I thought, but I wanted to make sure.

Mr. THOM. I shall not detain the committee in discussing this subject further than to throw this suggestion out. I think you are going to find from time to time not only the pressure of your constituents to bring home closer to them the administration of this most important law, but you are going to find that if this Interstate Commerce Commission here in Washingon is to perform the duties which Congress has laid upon it of a national character, such as valuation, such as consolidation, such as the performance of the duties outlined in this bill in respect to the valuation of these condemned properties, such as the study of the rate structure of the country, all those things coming in under Mr. Hoch's resolution, when you are going to put all those duties upon them and expect them to be well performed you have got to find some way of taking the detailed administration of this law from them and putting it where I think you ought to put it, closer to the people.

Mr. NEWTON. How many of those decisions would be treated as final? I mean in practice.

Mr. THOM. I think a good many. There are a good many times when the two parties can not agree, but want somebody else to tell them what is right, and in all that class of cases, of course, as soon as that regional commission determines it that would be settled, and the propostion I would make is that unless exceptions are filed within a certain time the order would become final.

Mr. NEWTON. Do you know in what percentage of the cases decided by the divisions of the commission applications are made for rehearing, so as to be heard by the full commission?

Mr. THOM. I do not know how many there are of that nature. I do not know the percentage. But I would expect great relief for the commission and, at any rate, you would have the record made by people of higher grade than examiners, people who are important enough to be nominated by the President and confirmed by the Senate, and they would be making a record which would in itself take off a great deal of the burden on the Interstate Commerce Commission and make a very much better and more reliable record.

Mr. NEWTON. It has occurred to me that the work of the commision might be expedited and the public interest served if there were a line of demarkation between what we call the rate-adjusting duties of the commission and the purely administrative duties that have been conferred upon them from time to time. I am wondering if you have ever given any thought to the desirability of legislation drawing such a line.

Mr. THOM. I do not think I have given thought to that, except that, of course, as that question occurred incidentally when we got up a proposition for regional commissions. And we determined all those questions of relief in favor of regional commission. That, in our judgment, is the best way to do it. I think it would be very hard to draw some other line and they might be embarrassed at times to find a statutory bar in the way of their proceeding. There is no definition that the mind of man can absolutely formulate which will deal adequately with an economic problem. That problem appears in unexpected ways, and it can not be anticipated. Therefore, I think that the wisest course for Congress is to lay down large principles, and to put on an administrative body the duty of determining in individual cases how those principles shall be applied.

Mr. NEWTON. I have often had this thought in mind. Here is a commission composed of 11 members, and they have to devote some of their time to sitting on questions of adjustment of rates which, of course, are extremely involved propositions, and at the same time they have more or less to do with the administrative features of the act, purely administrative features, financing, car service, safety-appliance acts, valuation, and so on. It has seemed to me that we would get more done if the work were divided and specialized, even if you have regional commissions.

Mr. THOM. Possibly so. I think the commission made an effort at that when it asked that it might act by divisions, but how much relief that has been I do not know. I should think there ought to be a way of assigning certain administrative features to somebody to determine that would not unduly burden the whole commission, and that I think is in your mind, and is very well worthy of consideration.

If I may for an instant now go over the remaining objections and suggestions of amendments that I have to this bill, I will be glad to hurry on.

The first one is a very trivial one and is a mere question of punctuation, which I will submit to the draftsman of this bill. The reason that I bring it up at all—I do not think it changes the meaning at all, and the only reason I bring it up is that it has been suggested to me. If you will turn to page 4, the words in lines 9 and 10, and in 17 and 18, inclosed in parenthesis, the words "by purchase, sale, exchange, lease or otherwise," it has been suggested that it would be very well to put those words between commas instead of in parenthesis, as commas would be more appropriate. I merely mention that.

On page 9, after the word "approved" in the first line I would suggest the insertion of a semicolon and the addition of the words:

or, in the case of the absorption by a parent company of a subsidiary, or of the acquisition by a parent company of the properties of a subsidiary, when all of the voting securities issued by such subsidiary, with the exception of directors' qualifying shares, are owned by the parent company, if the board of directors of such parent company votes for its adoption.

The effect of that is simply this: That where a company owns, where the parent company owns all of the stock and takes in a subsidiary, it does not have to have a stockholders' meeting but a meeting of the board of directors to pass on the matter.

Then in lines 12 and 13, on page 12, you will see the word in that paragraph 5, the word "title" is used in two different senses. In the first line it is title to real estate and in the twelfth line it refers to this act. I would suggest that they be reconciled in some way by puting the word "act" in place of the word "title" in the second place, or in some other way.

In lines 13 and 14, page 12, there is the word at the conclusion of that paragraph 5—the words used are "or an order of the commission entered thereunder." I would suggest that in place of those words "or an order of the commission entered hereunder," you insert the words "or of anything done under its authority, but shall pass and vest as provided in such plan as approved."

The reason for that is that something may be done by the parties under the order, the effect of which should be defined, and in so important a matter as the passing and vesting of real estate, it is desirable to have an affirmative statement as to how it shall pass and vest. That is to make it more definite.

In line 2, page 15, I would ask an amendment so as to exclude from the obligation to condemn, the holders of securities who, under their charter, have no right to compensation, but where the charter or the statute of the State gives to the majority the power to consolidate, without compensation, and the language which I will suggest to cover that is this. After the words at the end of line 2 on page 15, add the words:

Provided, That there shall be no such obligation to purchase or condemn any such security in cases where, under the terms of an agreement, arrangement, charter, or statute of a State, such nonassenting holders of voting securities are bound by the action of the majority in the premises and have no legal right to relief because of the consolidation or unification.

That amendment is especially presented at the instance of Mr. Sargent, president of the Chicago & North Western Railroad. It seems that in some of the companies with which he is acquainted there are charter or statutory provisions which expressly confer upon the majority the right to pass upon this question, and in that case there is no legal right of the disenting stockholders to compensation, and it seems to him, and it seems to me, that this statute ought not to undertake to confer upon them a right to compensation when their contract, their charter, the statutes of the State or otherwise, excludes them from that right. So I would ask that that be incorporated.

Mr. HUDDLESTON. Colonel, I do not fully understand why it is considered necessary or desirable to condemn such a security, we will say, as a bond.

Mr. THOM. It is not necessary to condemn that under this bill unless it has a voting power and dissents.

Mr. HUDDLESTON. Suppose it has a voting power; do you see any desirability for providing for its condemnation?

Mr. THOM. I know that some of the lawyers seem to think that where there is a voting power and you take action in respect to the security, that unless you do provide for the condemnation and for some legal right, the chances are you will have a good deal of litigation at the instance of some dissatisfied person in trying to hold up the consolidation. That has been suggested to me by Mr. Hines.

The CHAIRMAN. Is it not entirely optional with the holder of the bond whether it be condemned or not?

Mr. THOM. Yes; it is.

The CHAIRMAN. Because he has got to be a disinterested stockholder, has he not?

Mr. THOM. But I think his rights as a lien holder are so well secured anyhow that the chances are there would be no reason in justice for requiring that it be bought in. Otherwise, I rather accept the view of Mr. Huddleston, as suggested there, that there would be no necessity for that.

Mr. HUDDLESTON. Of course, the power to vote being part of the contract is no more sacred than any other part of the contract by which he retains his lien.

Mr. THOM. I think there is great force in that. Now, in the Parker bill, line 11, page 15, the words "as a board of appraisers to determine and report to the court the value of such securities," I am very anxious to have that word "determine" struck out and the word "inquire" put in, because I think the determination in law is not by that board, but by them reported and the determination is by the court.

In paragraph 2, on page 15, after the word "notice," in line 16, I would suggest, to take care of what the Interstate Commerce Commission has said to you in its letter in regard to persons under disability, the insertion of the following: "or, in the case of a holder of a security under legal disability, after the removal of such disability or the appointment for him of a guardian, committee, or personal representative." That extends notice in the case of persons under disability.

In line 16, on page 14, after the word "thereto," insert the following: "or, in the case of a holder under legal disability, after the removal of such disability, or after the appointment for him of a guardian, committee, or personal representative." That would go after the word "thereto," in line 16, page 14.

And, in line 7, page 16, there again appears the word "determine" in the same sense as at the previous point, and I ask that the word "inquire" should be substituted for it.

Then, in line 9, page 17, after the word "holders," insert "or the legal representatives thereof." That is to make this accord with the other suggestion about persons under disability.

After the word "securities," in line 13, on page 17, insert the words "or their legal representatives." For the same purpose.

And after the word "holder," in line 20, on page 17, insert the words "or his legal representative."

In lines 6 to 10, on page 18, I would suggest this language as a substitute for the language in the bill:

> In case of failure to pay the amount awarded within six months after the judgment or decree making the award has become final, and upon the deposit with the clerk of the court, properly assigned, of the security, or the title papers properly transferring the property so condemned, execution on such decree or judgment may be issued for the amount of such award.

The reasons for that will be apparent without my taking the time of the committee to explain it.

In line 23, on page 18, I imagine that the word "section" should be "title" or "act."

In paragraph 1 of section 214, line 23, page 18, and following down to line 4 on page 19, I would like to insert in place of that language the following—now, the language which I would like to substitute in the Parker bill is:

> Gain from the sale or other disposition of property, or income from any distribution, in connection with any such unification, shall not be subject to tax by or under the authority of any State or any political subdivision thereof. Any such unification shall be held to be a reorganization within the meaning of that term used in Part I of Title II of the revenue act of 1926.

Now, what I would like to have in place of that language would be: "Neither gain realized from the sale or other disposition of property, nor income from any distribution shall be taxed, nor shall any loss so realized be allowed as a deduction under any revenue laws of the United States or of a State," putting in the United States as well as the State.

In the Parker bill, after the word "repealed" in line 12 on page 20, where certain paragraphs of the present act are repealed, I wish to make a very earnest appeal to this committee—and I have presented this view to the chairman, and I asked Mr. Hall about it—or at least, got the chairman to ask Mr. Hall a question about it—as to whether or not the commission would object to saving paragraph 2 of section 5, in respect to any pending proceedings. I hope you will be able to amend that by inserting after the word "repealed" in line 12, page 20, the words "except as to proceedings pending under paragraph (2)"; and in line 17, after the word "repeal," insert "or after its repeal in a matter pending at the time of the passage of this act."

The whole purpose of those suggestions is to save the proceedings which are pending at the time of the passage of this act under section 2 and let the commission proceed through to a conclusion under that paragraph. That is especially desired by the Norfolk & Western Railroad. It has an application now pending before the commission for authority to acquire the Virginian, and they have been at very large expense in the taking of testimony, printing of arguments, and the presentation of their case, and the effect of this bill would be to cut them right off and to make them start over again under the provisions of the bill itself, because this bill repeals that provision. Now, I asked Mr. Hall the other day—at least, I got the chairman to ask Mr. Hall the other day—whether the commission would have any objection to that, and my understanding is that he said that they would not have any objection.

The CHAIRMAN. He said they favored it.

Mr. THOM. He said they would favor it, and I wish to ask the committee to save that paragraph of section 5 as to pending matters.

Mr. HUDDLESTON. That subsection 2 covers the matter of leases and so on?

Mr. THOM. Yes.

Mr. HUDDLESTON. Now, this bill does not seem to be a complete substitute for subsection 2.

Mr. THOM. I do not know any way in which it is not.

Mr. HUDDLESTON. In other words, it impresses me that probably subsection 2 ought to be preserved.

Mr. THOM. In what way is it not a substitute?

Mr. HUDDLESTON. The unification provided for is found in section 203, page 4—well, I guess that does cover it.

Mr. THOM. I think it does, Mr. Huddleston. I think it covers the same ground.

Mr. HUDDLESTON. Subdivision 2 (a) seems probably to cover it, but I think it ought to be pretty carefully compared wtih subsection 2.

Mr. THOM. (a) and (c) cover it.

There is quite a history connected with the attitude of the association in respect to that matter. There was an insistent demand on the part of such gentlemen as Mr. Blair of the Southern Pacific that paragraph 2 should be preserved. He had proceeded successfully under that section to acquire for the Southern Pacific the Central Pacific lease, and there has been a good many decisions on the meaning of it which he felt were valuable and that they should be preserved, so as to get through with the legal difficulties which had been already eliminated.

When the Nickel Plate decision was rendered and the commission was construing paragraph 2 of section 5 as an alternative method of consolidation, Senator Cummins became very much concerned. He said it was at war with his whole conception of the office of paragraph 2 of section 5, and he said that he must insist upon its repeal.

After that was done, after he took that position, I took that up with Mr. Blair and told him that as this bill seemed to cover the ground entirely I could see no adequate reason for his insisting on the retention of paragraph (2) of section 5, and he withdrew his objection after much consideration, and I think with some reluctance, but he did withdraw it, and in the Senate bill the repeal is made just as it is in this bill here. If you preserve it so far as to take care of pending matters and so far as to allow supplemental orders, as you do here, supplemental orders in matters which have already been acted on, I can see no real legitimate objection to requiring everybody to proceed under this bill and according to these methods, thus not having one method under section 5, where private rights may be still considered, and another under this bill, in which private rights I do not think can be considered. I hope you will make it certain that they shall not be considered except in so far as they are relegated to the courts. I think the argument in favor of its repeal is pretty valid under the present conditions.

Mr. HUDDLESTON. Mr. Hall carried the public interest theory to a very considerable extreme in saying that any action which tended to discourage investors would be against public interest.

Mr. THOM. I thought so, as applied by him.

Mr. HUDDLESTON. And that involved a requirement that the commission should find that the interested investors were protected. That is one ground on which I base the suggestion that we should be more definite in the authorization we give the commission and not give them a wide open authority in any case in which in their discretion they found that according to the public interest they should approve consolidation.

Mr. THOM. I understood that yesterday when the matter was under consideration, and at Mr. Newton's suggestion it was referred to your legislative counsel, and you gave me the privilege of talking with him on the subject, with the view to the origination of a provision that would make that certain, to be submitted back to this committee, and as I understand it, Mr. Alvord will undertake that and I will have the privilege of conferring with him for the purpose of trying to get something to present to the committee that will take out that doubt. I think if there is a doubt—I do not have it myself—but I think if there is a doubt on the part of the body that is going to administer this law, it ought to be taken out, that doubt ought to be removed. I quite agree with the view that you have on that subject, Mr. Huddleston.

Now, you were asking something about what taxes, the nature of the taxes that are referred to in the first paragraph of section 214, where all taxes, both by the Federal Government and by the States, on the processes of consolidation, are eliminated. I have some illustrations of taxes that have been imposed on consolidations which will give the reason for the elimination of that power of taxation if consolidations are to take place.

When the New York Central consolidated some years ago, in 1914, certain of its properties, the consolidation agreement provided an authorized capital stock of $300,000,000, and at the time of consolidation fees based on the authorized stock of the consolidated company were paid as follows:

Michigan, $150,000; Ohio, $300,000; Indiana, $300,000.

There was also paid in Illinois $300,000, based on the authorized stock and $249,590.46 as a fee for the issue of that amount of capital stock. The $300,000 paid to Illinois was, however, recovered under a decision of the Supreme Court of Illinois, where it was held

that the fee of 10 cents per hundred exacted for the approval by the Public Utilities Commission of Illinois of the issue of stock above referred to superseded the tax based on the authorized stock. Since that time the law relating to the fees to be paid to the commission in Illinois has been changed so as not to apply to stock, and a fee based on the authorized stock has been reenacted in the general corporation act.

The fees payable to the several States in which the New York Central is incorporated under the present State laws are as follows:

New York, one-twentieth of 1 per cent on the excess of capital stock of the new company over the aggregate capital stock of constituent companies.

Pennsylvania, one-third of 1 per cent on such excess.

Ohio and Indiana impose a tax of one-tenth of 1 per cent, and Illinois and Michigan one-twentieth of 1 per cent, on the authorized capital stock of the new company.

Now, you will understand the taxes have already been paid in all those States by the companies who operate there. They are required to pay them. They will do nothing more than continue to operate in those States, except to carry out this process of consolidation. Well, if it is to cost all that, it is a tremendous impediment in the way.

Mr. Rea made an address in which he has referred to that matter so far as the Pennsylvania is concerned.

He says:

> The new consolidated system company—

That is, the Pennsylvania—

> if subject to State laws, must be prepared to pay the fees required by the State in connection with its formation and the authorization of stock to be issued in exchange for the outstanding stock of the constituent companies. Just take two of these provisions and apply them to a system equal to the Pennsylvania Railroad system. If consolidated into one system valued at date at $2,500,000,000, which would be capitalized $1,250,000,000 in stock and $1,250,000,000 in bonds, there is a Federal tax on the original issue of securities of 50 cents for each thousand par value, which would be equal to $1,250,000. In some of the States through which it passes there is a tax equal to one-tenth of 1 per cent on the par value of the authorized capital stock, which if carried out by all the respective States would amount to $1,250,000 in each State, etc.

I just give you those illustrations of the impediment.

Mr. HUDDLESTON. Is not that applicable merely in cases where an entirely new entity is organized? Would it be applicable to a merging of corporations such as is authorized by this bill?

Mr. THOM. Such as I have read to you about the New York Central is a case where the entity was preserved.

Mr. HUDDLESTON. What was the tax on that?

Mr. THOM. It was taxed on the issue of the securities necessary to carry the unification out, but the entity was preserved.

Mr. HUDDLESTON. They issued new stock, and the tax was levied on the issuance of new stock?

Mr. THOM. Yes.

Mr. HUDDLESTON. But it would not be incurred where there was merely a merger with the retention of the old stock?

Mr. THOM. Well, some of the States, I imagine, tax even that process. But whatever they are, here is the broad policy that is here

asserted, and that is if consolidations are in the public interest and ought to be carried out, the processes of consolidation ought not to be taxed, because that is an impediment in the way; that the States have given nothing, and the corporations have received nothing, except to get what Congress says they ought to get, consolidation, and therefore it is not in the public interest that there should be this great barrier of taxation in the way.

Mr. HUDDLESTON. Now, if these corporations become, as I have thought they may become, Federal corporations, they would not be subject to this tax on their stock by the States, would they?

Mr. THOM. If they were incorporated under the Federal law they would not be, but I think that idea of Federal incorporation has been abandoned, for the present, at least. I do not think it is practicable now.

Mr. HUDDLESTON. Well, I have the thought that possibly we are making Federal corporations by this act.

Mr. THOM. I think there is no basis for that except in the one case which Mr. Hoch brought out here the other day, where there is a technical consolidation under the authority of the act, and the question arises—consolidation into a new company and the production of a new company—and Mr. Hoch's question was whether or not that was not a Federal corporation. I want to say that since that question was asked me I have had the opportunity of asking the same question of two men of very high standing in the legal departments of two of the largest railroads of the country and they differ. One of them says it will become a Federal corporation, the other that it will not.

Mr. HUDDLESTON. Would it not be highly desirable to cover that point and take it out of any matter of doubt and say that it shall be a Federal corporation or shall not be?

Mr. THOM. I think that what Mr. Burtness said the other day would be found to be the practical solution of that. If there is ever an occasion for a technical consolidation—which I do not believe you are going to find will ever be the case, because I think in practice you are going to find that an existing corporation is going to acquire other properties and not become a consolidated corporation—it would have these properties but its identity would remain the same, so I do not think that is going to arise; but if it should arise in any case, I think in practice what Mr. Burtness suggested here would happen and they would go to some State and take out a charter. They would not be willing to rely upon this view, which Mr. Hoch presented with force the other day and which, as I say, there is a difference of opinion about among lawyers—they would not be willing to rely in so important a matter upon a corporation created in that, I may say, inadequate way, but they would go, as Mr. Burtness suggested, to some State and take out a charter.

Mr. HUDDLESTON. So far as franchises and additional corporate powers conferred by this bill are concerned, it is clear they would not be subject to taxation by any State.

Mr. THOM. No; that franchise would not be the franchise which was conferred by the Federal Government.

Mr. HUDDLESTON. So that these corporations enjoying such franchises would have an advantage over corporations which derived

their franchises from the States of their creation, practically all of which are taxable now.

Mr. THOM. I do not know that I catch your question, Mr. Huddleston.

Mr. HUDDLESTON. It is a very common practice for the States to tax the franchises of corporations which they create, and that is found to be legitimate by the courts, where there is proper State power. Now, these corporations that receive these additional franchises, get franchises which are not subject to taxation by the States which created them, although the franchises previously enjoyed by them would be subject to taxation, and I wonder whether the inequality and discrimination is desirable.

Mr. THOM. I think it is very desirable and inevitable. You do not detract anything from the taxing power of the State in respect to those corporations, because all the franchises that the States confer are still subject to taxation by the States. You simply do not allow the taxation of the franchise to consolidate.

Mr. HUDDLESTON. Well, it seems to me that there are additional franchises—and I do not know of any other name for corporate powers conferred, or probably conferred by this bill—that are not merely powers to consolidate. These corporations consolidating are given very considerable powers in excess of what they previously possessed, it seems to me, or may be given.

Mr. THOM. I think whatever powers they have are given in the interest of the National Government and can not be taken away by any one State.

Mr. HUDDLESTON. They can not be taxed.

Mr. THOM. They can not be taxed by any one State, and that is in the interest of the general public.

There is one thing that we ought to appreciate, and that is that the rights that were acquired by the States in going into the Union are State rights just as much as the rights reserved by the States when they went into the Union, and in many cases are of greater value. One of the rights that States acquired when they went into the Union was to be defended by the national power. Another was the right to have post offices and post roads conducted at the expense of the United States. Another was that commerce, in which all the States were interested, should not be embarrassed and destroyed by one of the States, and that last consideration was the real consideration which brought about the convention which made this country a union. Commerce, the necessity for the protection of all the States against the greed of some, against the narrow policies of some, was the inducing cause which made this country a nation, more than any other.

Mr. HUDDLESTON. To state a concrete illustration of the thought I have in mind, Colonel, we will take a railroad chartered under the laws of Texas, which has a franchise to do business in Texas only. It consolidates with a road, we will say, doing business in Arkansas, or it absorbs the road doing business in Arkansas, and succeeds to the franchises over the State of Arkansas, which, of course, would have value in addition to the franchises which it previously had. The State of Texas could not tax the added value accruing to the franchise of that corporation because of this extension of them to another State.

Mr. THOM. It could not; and I do not think it ought to. It retains the power of taxation of all it gave. In addition to that, what it derives from the National Government is given in the exercise of its power over the regulation of interstate commerce, and it is not good policy to allow the States to tax the regulations of the United States of interstate commerce.

Mr. HUDDLESTON. Now, if instead of the Texas corporation acquiring the Arkansas railroad, a company chartered by the laws of the latter State should acquire the railroad and franchise of the Texas company, under this act probably the State of Texas could not tax those franchises.

Mr. THOM. Of its own?

Mr. HUDDLESTON. Yes.

Mr. THOM. I think it could.

Mr. HUDDLESTON. That it previously had taxed?

Mr. THOM. I think it could. I don't think there is any question about that.

Mr. HUDDLESTON. Now, what I have in mind about the matter is contained in subdivision (a) of section 211 (1):

> (a) The resulting corporation shall have all and singular the rights, privileges, powers, immunities, exemptions, and franchises of each of the constituent corporations; and it shall have all powers necessary or convenient to carry into effect any plan approved by the commission under this act and to carry on and do the business authorized in its franchises.

We did not decide yesterday, I believe, what State the consolidated corporation would be a citizen of, but if we assume that the Arkansas corporation, that the consolidation was effected not by a merger of corporations but by a merger of systems, of railroad systems, the acquisition of property, the Arkansas corporation being retained as an entity and being clearly an Arkansas corporation would have power then to operate in the State of Texas and enjoy all the franchises of the corporation which it had succeeded, but in that case it would seem to me pretty likely that the State of Texas could not tax those franchises.

Mr. THOM. That is not my view. I think that Texas would still be able to tax the franchises enjoyed under its laws.

Mr. HUDDLESTON. But that is a point we ought to make certain, don't you think?

Mr. THOM. I think it is clear now, but, of course, we ought to make anything clear that is obscure in legislation. I think it is clear now.

The CHAIRMAN. Do you want to say something about section 215, Colonel, and the last two paragraphs there?

Mr. THOM. As I understand section 215, Mr. Chairman, it provides for a case where there has been submitted to the commission a plan for the issuing of certain securities and the commission approves it or passes on it, and if it approves them, there seems to be no reason for requiring another proceeding under section 20 (a), for them to say, "Yes, we approve of the issuance of securities which we approved of in the plan that was presented to us." That is all I understand that section 215 is.

Mr. HOCH. Right in that connection, I have a note to call your attention to the words in line 9: "in accordance with," and the same

words used in the next paragraph. This is perhaps very technical, but it seems to me that that is a little broader than is necessary to carry into effect the idea we are trying to enact here. The point is, I take it, that the securities which are issued in pursuance of an order under this title shall not be subjected to the provisions of 20a, but you might have other securities, that are "in accordance with" the terms but are not securities issued in pursuance of a consolidation order. I do not know whether I make myself clear or not. I take it there is no purpose here to take out from under the provisions of section 20a which has to do with the issuance of securities, the case of any securities except those which are issued in direct pursuance of an order under this title.

Mr. THOM. Under direct authority and in pursuance of the order. I interpret "if in accordance with" here as meaning that. Now, if it does not, there is another case to clear up.

Mr. HOCH. It seems to me it might not only cover those but might cover other securities subsequently issued by this corporation.

Mr. THOM. I do not see how the latter would be in accordance with the terms of the order.

Mr. HOCH. Possibly not. I am just feeling my way as to whether there is any possibility there.

Mr. THOM. Of course I would suppose that there was no purpose to do that. It is certainly not my purpose to advocate it. My purpose and advocacy here is simply to say that if there has been an approval of the issuance of securities by the commission in the process of approving a plan for a consolidation, there would be no necessity then to go to another proceeding under 20a for that issue of security.

Mr. HOCH. The word "accordance" is a very broad word.

Mr. HUDDLESTON. It seems to denote "in harmony with."

Mr. HOCH. Yes, that is the very thing. That is a good expression. It is in harmony with.

Mr. THOM. Well, I have no doubt that Mr. Alvord will take that under consideration when he is considering these things.

Mr. HUDDLESTON. You might make it "where authorized by the order of the Interstate Commerce Commission," or "where authorized by the terms and conditions," and so forth.

Mr. THOM. Well, that might be put "if authorized by the order of the commision, issued under this title, approving the plan."

Mr. HOCH. Yes; that would limit it to what you are trying to cover solely.

Mr. THOM. That is all I am advocating, and I think it is so expressed now, but with great respect to those gentlemen that do not think it does.

Mr. HOCH. I am inclined to think it does, only I think it is somewhat debatable. Of course, it is always desirable to get rid of debate if you can.

Mr. THOM. Now then, in No. 2 of that section, which reads:

(2) The provisions of paragraph (18), (19), and (20) of section 1 shall not apply to any extension, enlargement, or abandonment of properties, if in accordance with the terms and conditions of an order issued by the commission under this title, approving a plan, nor shall such paragraphs apply to any construction, acquisition, or operation of lines or transportation over such lines, in pursuance of the extension, enlargement, or abandonment.

My understanding of what is intended there is simply to say that having in the consolidation proceeding already passed on these proposals embraced in sections 18, 19, and 20, it shall not be necessary for an additional proceeding in order to get the authority of the commission, and thus the word "accordance" might be "if authorized."

Mr. HOCH. I had a note on that same question, and particularly with reference to line 18, which provides that the transportation over such lines shall not be subjected to the provisions of paragraphs 18, 19, and 20 of section 1. I have been trying hastily here to examine 18, 19, and 20, which are the paragraphs referring to the matter of extensions, and I am not sure from this hasty reading of it just what you mean by "transportation over such lines" shall not be subjected to the provisions of those paragraphs. Here is an extension that is authorized by virtue of a consolidation process, now then you provide, for some reason here, that after you have authorized that extension, transportation over that extension shall not be subjected to the provisions of the present law. I do not know whether there are any provisions with reference to transportation over those extensions under the present law.

Mr. ALVORD. Paragraphs 18, 19, and 20 prohibit transportation as well as the addition or extension or enlargement.

Mr. HOCH. I do not understand that, Mr. Alvord.

Mr. ALVORD. Paragraph 18 provides:

After 90 days after this paragraph takes effect, no carrier by railroad subject to this act shall undertake the extension of its line of railroad, or the construction of a new line of railroad.

The CHAIRMAN. He is reading from the law.

Mr. ALVORD. Paragraph 18 of section 1.

Mr. HOCH. Well, it is getting somewhat involved, but let me read here, beginning on line 16: "Nor shall such paragraphs"—namely 18, 19, and 20—"apply to any construction, acquisition, or operation of such lines, in pursuance of the extension, enlargement, or abandonment." Now, what transportation over the line provided for in this extension under the consolidation is to be taken out from under the provisions of 18, 19, and 20?

Mr. ALVORD. The sole purpose of the provision is to relieve from the provision in paragraph 18, section 1, which says that no carrier shall engage in transportation over any new, extended, or enlarged line until the commission has issued a certificate. If you will read the compilation, beginning in the fifth line, paragraph 18——

Mr. HOCH (interposing). If that is the case I do not see what is the use of all that latter language. Why not just stop at the word "plan" in line 16? That provides that the paragraph does not apply. That is all there is to it. However, that can be examined later.

Mr. THOM. Now, Mr. Chairman, there is one other feature that I want to make a brief comment on. That is section 216. The Senate bill undertakes to legislate as to what shall happen after the expiration of a given number of years, legislating now. It says that at the end of three years or five years, I have forgotten which, certain things shall happen by virtue of that act; that is to say, that the commission shall do specific things there pointed out. I dissent very earnestly from the wisdom of such a provision for two reasons: First, because it is compulsory. It is intended to apply compulsion

at the end of a given period, and for the additional reason that it is attempting to say now what legislation shall come into effect five years hence. I think it is very much wiser for Congress to legislate as to what shall take effect at the time of the legislation and in the light of conditions then existing.

I have always been impressed by something that was said by a very eminent man coming from your State, Mr. Parker, Mr. James C. Carter, who was at the head of the New York bar at one time, and in my early life I had the privilege of listening to him make an address on the subject of the common law and the making of a code of laws. Mr. David Dudley Field was the great apostle of codification, and Mr. Carter and he were always in mortal combat on the question of whether or not the common law was the proper system or a codification of laws was the proper system, Mr. Field contending that man's mind was able to make a schedule in writing of all the laws applicable to all conditions that might arise, and Mr. Carter was an apostle of the common law and he used to say that the beauty and the glory of the common law was that it expanded by natural evolutionary processes to take care of every condition that may arise in the future, and he denied the power of man's mind to make a schedule to-day for all the future as to what the law should be, and used this illustration: He said you might as well ask of the naturalist to classify the fauna and the flora of an unknown world. Well, I think that is true of legislation. You can not legislate with wisdom until you know your facts. You can not legislate for an unknown world, and you do not know what transportation is going to be five years hence.

What is the relation of the waterways of this country to the railroads of the country in five years? What is going to be the relation of highway transportation to the railroads in five years? What is going to be the relation of aerial transportation to the railroads in five years? And is it not far better to do as is here done, to say that at the end of a certain number of years the commission shall state to Congress the facts then existing, and, in the light of the facts as they see them, make recommendations as to what Congress had better do then? I think it is infinitely preferable and infinitely wiser.

The CHAIRMAN. Are there any other questions?

We are very much obliged to you, Colonel Thom.

Mr. THOM. I am certainly very much obliged to the committee.

May I ask for this privilege, Mr. Chairman? Doubtless there are going to be some amendments that will be originated by the committee or prepared by your counsel here, and I would like to have an opportunity to see the amendments suggested and talk them over with your counsel, so as to be able to make any suggestions that occur to me.

The CHAIRMAN. That will be entirely agreeable.

(Pursuant to the request of the committee, Mr. Alvord submitted the following memorandum:)

MEMORANDUM

[Decisions of the Interstate Commerce Commission under paragraph (2) of section 5 of the interstate commerce act, as amended]

Paragraph (2) became a part of section 5 of the interstate commerce act by an amendment made by section 407 of the transportation act, 1920. (41 Stat. 456, 480–481.) The paragraph reads as follows:

(2) Whenever the Commission is of opinion, after hearing, upon application of any carrier or carriers engaged in the transportation of passengers or property subject to this Act, that the acquisition, to the extent indicated by the commission, by one of such carriers of the control of any other such carrier or carriers either under a lease or by the purchase of stock or in any other manner not involving the consolidation of such carriers into a single system for ownership and operation, will be in the public interest, the Commission shall have authority by order to approve and authorize such acquisition, under such rules and regulations and for such consideration and on such terms and conditions as shall be found by the Commission to be just and reasonable in the premises.

The decisions of the commission entered prior to April 17, 1926, and published, have been examined in preparing the memorandum.

Although no assurance can be given that all the decisions of the Interstate Commerce Commission under the paragraph are cited, it is believed that the more important decisions are included in the memorandum.

General discussions of the consolidation provisions of section 5 will be found in 65 I. C. C. 105; 72 I. C. C. 128; 86 I. C. C. 371, 373 et seq.; 90 I. C. C. 732; and in the Nickel Plate decision (March 2, 1926), 105 I. C. C. —. The decisions have been classified, for convenience and reference, according to the method of acquisition approved or proposed in the application.

MERGER

Application denied.

76 I. C. C. 797, March 19, 1923: Applications of the Boston & Maine Railroad for authority to acquire by merger the corporate property, rights, credits, and franchises of its subsidiaries—the York Harbor & Beach Railroad Co.; the Sullivan County Railroad; the Vermont Valley Railroad; the Barre & Chelsea Railroad Co.; the Montpelier & Wells River Railroad; and of the proprietors of Portsmouth Bridge—were dismissed upon the ground that the contemplated merger would involve the consolidation of the applicant and the subsidiary companies into a single system for ownership and operation, that the commission was without jurisdiction under paragraph (2) of section 5, and that the applications were premature under paragraph (6) of section 5.

PURCHASE OF PROPERTY

Applications approved.

70 I. C. C. 31, June 29, 1921: Minneapolis, St. Paul & Sault Ste. Marie Railway Co. was granted authority to purchase all the property used for railroad purposes by the Wisconsin & Northern Railway Co., and (under section 20a) issue bonds in part payment for such property.

70 I. C. C. 328, August 10, 1921: The Northern Pacific Railroad Co. was authorized to acquire all the properties of the Billings & Central Montana Railway Co.

70 I. C. C. 550, October 25, 1921: The Chesapeake & Ohio Railway Co. was authorized to acquire by purchase the property, rights, and franchises of the Chesapeake & Ohio Northern Railway Co., and (under section 20a) to assume, in part payment, an outstanding obligation of the Chesapeake & Ohio Northern Railway.

Application denied.

70 I. C. C. 682, Dec. 10, 1921: The Pittsburgh & West Virginia Railway Co. applied for authority under section 20a to issue capital stock and to assume liability in connection with its acquisition of the property, franchises, rights, and credits of the West Side Belt Railroad Co. All the stock of the Belt Co. had been acquired by the Pittsburgh Co. (65 I. C. C. 124), but no authority had been obtained for the acquisition by the Pittsburgh Co. of the property, franchises, rights, and credits of the Belt Co. The application was denied upon the ground that the proposed issue and assumption of obligation and liability were not for a lawful purpose prior to a grant of authority under section 5 for the proposed acquisition.

In Pittsburgh & West Virginia Railway Co. *v.* The Interstate Commerce Commission (Court of Appeals, D. C.; 1923), 293 Fed. 1001, an appeal from

the Supreme Court of the District of Columbia dismissing a bill for an injunction to restrain the Attorney General and the Interstate Commerce Commission from proceeding to enforce penalties or forfeitures or otherwise interfering with the issuance of stock and the assumption of liabilities was dismissed, upon the ground that the judgment of the commission under section 20a can not be reviewed by the courts. An appeal to the Supreme Court was allowed, but was dismissed on motion of counsel for the railway company on November 24, 1924 (266 U. S. 640).

LEASE OF PROPERTY

Applications approved.

65 I. C. C. 105, August 13, 1920: The proposed lease to the St. Louis Southwestern Railway Co. of all the property owned or thereafter acquired by the Valley Terminal Railway, a nonoperating company, was approved for a period of two years, but a provision in the lease that it was to remain in effect until terminated by mutual agreement was disapproved.

70 I. C. C. 299, August 5, 1921: The Pennsylvania Railroad Co. was authorized to acquire by lease the control of the railroad property and franchise, including certain terminals and ferry and transfer facilities of the New York, Philadelphia & Norfolk Railroad Co. for a term of 999 years. The Pennsylvania owned all the capital stock of the Norfolk, and the authorization was given upon the express condition that the Pennsylvania was not to sell, pledge, or otherwise dispose of the capital stock of the Norfolk, or any part thereof, without the consent of the commission.

70 I. C. C. 301, August 5, 1921: The Pennsylvania Railroad Co. was authorized to acquire, by lease, control of the railroad, property, and franchises of the Cumberland Valley & Martinsburg Railroad Co. for the term of 999 years. The Pennsylvania owned all the outstanding capital stock of the company, and the commission's approval was given upon the similar express condition prohibiting disposition of the stock.

70 I. C. C. 303, August 5, 1921: The Pennsylvania Railroad Co. was authorized to acquire, by lease, the railroad, property, and franchises of the Perth Amboy & Woodbridge Railroad Co., a nonoperating company, for the term of 949½ years, or until the termination of an existing lease of the United New Jersey Railroad & Canal Co. to the Pennsylvania. The Pennsylvania, as lessee of the United New Jersey, owned all the outstanding stock of the Perth Amboy and had operated the Perth Amboy's railroad since 1889. The authorization was given upon the similar express condition prohibiting disposition of the stock.

70 I. C. C. 306, August 5, 1921: The Pennsylvania Railroad Co. was authorized to acquire, by lease, the railroad, property, and franchises, of the New York Bay Railroad Co., for the term of 949½ years, or until the termination of the lease of the United New Jersey Railroad & Canal Co. to the Pennsylvania. The Pennsylvania, as lessee of the United New Jersey, owned all the outstanding stock of the New York, and the railroads had been operated as one system for many years. The authorization was given upon the similar express condition prohibiting disposition of the stock.

70 I. C. C. 396, August 25, 1921: Henry S. Hastings, receiver of the Pittsburgh, Shawmut & Northern Railroad Co., was authorized to acquire, by lease, control of the Rochester, Hornellsville & Lackawanna Railroad. The lease was to remain in full force and effect until terminated by either party upon six months' notice, but in any event was to terminate at the end of the receivership of the Pittsburgh.

70 I. C. C. 405, August 29, 1921: The Maine Central Railroad Co. was authorized to acquire, by lease, control of the Belfast & Moosehead Lake Railroad Co. The proposed lease was actually a renewal of an existing lease, which expired the day following the day of the filing of the joint application, except that the proposed lease substituted a provision for indefinite continued operation for the fixed term of 50 years in the prior lease.

70 I. C. C. 425, September 2, 1921: The Mississippi Central Railroad Co. was authorized to acquire, by lease, the control of a branch line of the Gulf, Mobile & Northern Railroad Co. The term of the proposed lease coincided with the duration of a trackage contract, which was to continue for three years and thereafter until terminated by either party on 12 months' notice to the other.

70 I. C. C. 485, September 26, 1921: The Texas & New Orleans Railroad Co. was authorized to acquire control, by lease, of the Texas State Railroad, for a term of five years. The contract on behalf of the State Railroad was entered into by a board of managers for the railroad, created by the Texas Legislature, under authority of the Texas statute, and had been confirmed and ratified by the Legislature of Texas and approved by the governor.

70 I. C. C. 514, October 14, 1921: The Atchison, Topeka & Santa Fe Railway Co. was authorized to acquire control, by lease, of the railroad of the California Southern Railroad Co., for a term of 10 years and thereafter from year to year, subject to the right of either party to terminate the lease at any time upon 90 days' notice. The Santa Fe Land Improvement Co., a corporation controlled by the Santa Fe, held an option, which it stated it intended to exercise, to purchase all the capital stock and bonds of the California.

70 I. C. C. 694, December 10, 1921: The acquisition by the Chesapeake & Ohio Railway Co., by lease, of the property, rights, and franchises of the Chesapeake & Ohio Railway Co. of Indiana was authorized and approved.

72 I. C. C. 128, July 10, 1922: The Pennsylvania Railroad Co. was authorized to acquire control, by lease, of the railroad and leased lines of the Pittsburgh, Cincinnati, Chicago & St. Louis Railroad Co. (the Panhandle), for the term of 999 years. The Pennsylvania and the Pennsylvania Co. (a corporation whose entire stock is held by the Pennsylvania) owned 77.54 per cent of the entire capital stock of the Panhandle. The authorization was upon the express condition that the Pennsylvania Co. and the Pennsylvania Railroad should not sell, pledge, or otherwise dispose of the capital stock of the Panhandle, now owned or controlled by them or either of them, or any part thereof, without the consent of the commission. The application was considered and approved by the entire commission, with Commissioner Potter concurring (Commissioners Lewis and Cox concurring with him), and Commissioners Hall, Daniels, Eastmen (Commissioner Aitchison concurring with him), and Campbell dissenting. This case is probably the leading case involving a long-time lease and the condition against subsequent disposition of stock.

72 I. C. C. 243, July 21, 1921: Upon joint application by the New York Central Railroad Co., the Toledo & Ohio Central Railway Co., and the Kanawaha & Michigan Railway Co., the following leases were approved: (a) the lease to the Kanawaha & Michigan of the railroads, properties, and franchises of the Kanawaha & West Virginia Railroad Co.; (b) the lease to the Toledo of the railroads, properties, and franchises of the Zanesville & Western Railway Co. and of the Kanawaha & Michigan, including an assignment of the lease under (a); and (c) the lease to the New York Central of the railroads, properties, and franchises of the Toledo, including assignments of the leaseholds authorized to be acquired by the latter company. Each of the proposed leases was for the term of the corporate existence of the lessor. The New York Central for a number of years has owned the entire capital stock of the Toledo; the Toledo since 1914 has owned 99.4 per cent of the capital stock of the Kanawaha & Michigan, and owns all of the capital stock of the Zanesville & Western; and the Kanawaha & Michigan owns all of the capital stock of the Kanawaha & West Virginia. The authorization was upon the similar express condition prohibiting disposition of the stock.

72 I. C. C. 260, July 22, 1922: The Pennsylvania Railroad Co. was authorized to acquire control, by lease, of the railroad and property of the Grand Rapids & Indiana Railway Co. for the term of 999 years. The Pennsylvania owned 98.66 per cent of the outstanding capital stock of the Grand Rapids. The authorization was upon the similar express condition prohibiting disposition of the stock.

72 I. C. C. 674, October 5, 1922: The Pennsylvania Railroad Co. was authorized to acquire control, by lease, of the properties of five of its subsidiaries, for a term of 999 years. The Pennsylvania company (the entire capital stock of which was held by the Pennsylvania) owned the entire capital stock of each lessor, except directors' qualifying shares.

76 I. C. C. 294, December 23, 1922: The Illinois Central Railroad Co. was authorized to acquire control, by lease, for a term of 99 years, of the new line of railroad authorized to be constructed by the Chicago, St. Louis & New Orleans Railroad Co. and a line authorized to be acquired by purchase by the Chicago, St. Louis & New Orleans from the Kentucky Midland Railroad Co. The entire capital stock of the Chicago is owned by the Illinois Central, and the Illinois Central operates the railroad of the Chicago under a lease for 99 years.

79 I. C. C. 33, March 24, 1923: The Wisconsin Central Railway Co. was authorized to acquire control, by lease, of a part of the railroad of the Stanley, Merrill & Phillips Railway Co., for a term of 10 years with a right to renew for two additional periods of five years each; and the Minneapolis, St. Paul & Sault Ste. Marie Railway Co. (which operates the line of the Wisconsin Central under a lease or operating contract entered into April 1, 1909, for a term of 99 years), was authorized to acquire control of the line leased by the Wisconsin Central, under the terms of the 1909 lease.

86 I. C. C. 116, December 24, 1923: The New York, Ontario & Western Railway Co. was authorized to acquire control, by lease, of the railroads of the Utica, Clinton & Binghamton Railroad Co., and the Rome & Clinton Railroad Co., for the terms of the charters of the Utica and Rome companies, respectively, and any and every renewal or extension thereof. The authorized lease continued in effect a relation that had existed for more than 35 years.

86 I. C. C. 119, December 22, 1923: The Chicago, Rock Island & Pacific Railway Co. was authorized to acquire control, by lease, of the railways, franchises (other than the franchise to be a corporation), and other property of the Keokuk & Des Moines Railway Co. The lease was practically a renewal of a prior lease, and was to continue during the pendency of the receivership.

90 I. C. C. 368, July 5, 1924: The Oklahoma City—Ada—Atoka Railway Co. was authorized to acquire control, by lease, of a line of railroad owned by the Missouri—Kansas—Texas Railroad Co. and to acquire the right to use jointly with the M—K—T the terminal facilities of that carrier at Atoka, for a term of one year and thereafter until the expiration of 90 days from notice of intention to terminate. The M—K—T guaranteed the applicant against loss in excess of $10,000 per annum from the operation of the leased line.

94 I. C. C. 87, November 14, 1924: The Chicago, Rock Island & Pacific Railway Co. was authorized (a) to acquire the rights of the successful bidder at foreclosure sale to acquire by purchase the line of railroad formerly belonging to the Keokuk & Des Moines Railway Co.; (b) to cause such line of railroad to be conveyed to the St. Paul & Kansas City Short Line Railroad Co. (all of the railroad of which had been leased, together with after-acquired property, to the Rock Island); and (c) to have the lines so conveyed included in the lease under which the properties of the short line are operated by the Rock Island, for a period of 99 years.

94 I. C. C. 93, November 14, 1924: New York Central Railroad Co. was authorized to acquire control, by lease, of the Hudson River Connecting Railroad Co. and all the franchises and facilities appurtenant thereto (including "both owned and hereafter to be acquired"), for a term of one year.

94 I. C. C. 221, December 3, 1924: The Edward Hines Yellow Pine Trustees, (which operated the Mississippi Southern Railroad) was authorized to acquire control, by lease, of a part of the line of railroad of the Gulf & Ship Island Railroad Co., for a period of 15 years, or for such period as may be necessary for the removal of certain timber.

94 I. C. C. 295, December 23, 1924: The Chesapeake & Ohio Railway Co. filed an application for authority to acquire control of (a) the Ashland Coal & Iron Railway Co. by purchase of its entire capital stock, except directors' qualifying shares, and/or by lease and operation of its railroad; (b) the Long Fort Railway Co., by purchase of its entire capital stock and all of its issued mortgage bonds and other capital indebtedness, and/or by lease and operation of its railroad; and (c) the Millers Creek Railroad Co. by purchase of its entire capital stock and capital indebtedness, and/or by lease or operation of its railroad. The applicant withdrew its application except in so far as it requested authority to acquire control, by lease, of the railroads of the three companies. The applicant owned all the capital stock of the three companies and each of the leases was for a term of one year and thereafter, subject to termination upon 30 days' notice. The acquisition of control by lease was approved and authorized, with a proviso that nothing in the order should be construed as authorizing the Chesapeake & Ohio to purchase the railroads.

99 I. C. C. 207, June 4, 1925: The Buffalo, Rochester & Pittsburgh Railway Co. was authorized to acquire control, by lease, of the railroad of the Rural Valley Railroad Co., upon the acquisition thereof by the Allegheny & Western Railway Co., in accordance with the terms of an existing lease.

99 I. C. C. 319, June 30, 1925: The Southern Pacific Co. was authorized to acquire control, by lease, of the railroad of the Lake Tahoe Railway & Transportation Co. for a period of 99 years.

99 I. C. C. 450, August 5, 1925: The Stewartstown Railroad Co. was authorized to acquire control, by lease, of the line of railroad of the New Park & Fawn Grove Railroad for a term of 99 years, renewable for an additional term of 99 years at the applicant's option, but subject to termination by either party upon 30 days' notice. The applicant owned 871 of the 981 shares of outstanding capital stock of the New Park Co.

99 I. C. C. 641, September 9, 1925: The St. Louis Southwestern Railway Co. of Texas was authorized to acquire control, by lease, of the railroad and other property of the Stephenville North & South Texas Railway Co. for a term of two years, with an option to the St. Louis Co. for a further extension of the term for a period not to exceed 38 years. The authority was supplemental to the authority granted in 86 I. C. C. 688, granting authority for the acquisition of control for a period of two years.

99 I. C. C. 667, September 12, 1925: The Lehigh Valley Railroad Co. and the Reading Co. were authorized to acquire control, by lease, of the railroad of the Ironton Railroad Co. for a term of 25 years. Each of the applicants had been previously authorized to acquire and had acquired by purchase 50 per cent of the capital stock of the Ironton (82 I. C. C. 665, as amended by 90 I. C. C. 299).

99 I. C. C. 698, September 19, 1925: The Terminal Railroad Association of St. Louis was authorized to acquire control, by lease, of the property, rights, privileges, leases, leaseholds, interests, estates, rights of way, and franchises of any and every kind and description now owned or hereafter acquired, of its subsidiaries, the St. Louis Merchants Bridge Terminal Railway, the East St. Louis Connecting Railway Co., and the St. Louis Transfer Railway Co., for a period of 99 years. The approval contained a saving clause that nothing in the report or order should be construed as relieving or intending to relieve the applicant or any of the other defendants named in the antitrust proceeding (U. S. *v.* St. Louis, 224 U. S. 383) from the requirements of the decree entered (236 U. S. 194).

105 I. C. C. 478, February 11, 1926: The Atchison, Topeka & Santa Fe Railway Co. was authorized to acquire control, by lease, of the railroad and properties of the Rocky Mountain & Santa Fe Railway Co. The Santa Fe controls the Rocky Mountain through ownership of the entire capital stock, except directors' qualifying shares, and operated its lines under a lease which expired July 1, 1925. The new lease was authorized for a term of 10 years from July 1, 1925, and thereafter from year to year, subject to termination upon 90 days' notice.

105 I. C. C. 507, February 13, 1926: The Panhandle & Santa Fe Railway Co. was authorized to acquire control, by lease, of the railroad and property of the South Plains & Santa Fe Railway Co. The lease was practically a renewal of an existing lease, except that it included a newly constructed line for a term of 10 years and thereafter from year to year, subject to termination upon 90 days' notice. The Panhandle and South Plains are both controlled by the Atchison, Topeka & Santa Fe through ownership of all their capital stock except directors' qualifying shares.

105 I. C. C. 567, February 26, 1926: The Chicago & Illinois Midland Railway was authorized to acquire control, by lease, of the railroad of the Springfield, Havana & Peoria Railroad Co. (For prior order see 105 I. C. C. 459.)

105 I. C. C. 575, February 27, 1926: The Canadian Pacific Railway Co. was authorized to acquire control, by sublease, of a line of railroad owned by the Connecticut & Passumpsic Rivers Railroad Co., which had been leased to the Boston & Lowell Railroad Co. for a term of 99 years, and which lease had been assigned to the Boston & Maine Railroad. The lease of the Canadian Pacific was for a term of 30 years. The attorney general of the State of Vermont called attention to certain laws of the State of Vermont providing that an alien railway corporation shall not, by itself or through others, own or acquire title to any railroad, or the use thereof, or have anything to do with the management or control of the railroad in that State without leave of the General Assembly. The Canadian Pacific is incorporated under the laws of Canada.

Applications denied.

79 I. C. C. 481, May 19, 1923: The joint application of the Texarkana & Fort Smith Railway Co. and the Port Arthur Canal & Dock Co. (a corporation

owning and operating elevator and warehouse facilities, together with docks and wharves at Port Arthur, Tex.) for an order authorizing the Texarkana Co. to acquire control, by lease, of the properties of the Dock Co. was dismissed upon the ground that the Dock Co. was not a carrier within the meaning of paragraph (2) of section 5.

94 I. C. C. 39, October 29, 1924: The application of the Susquehanna & New York Railroad Co. for authority to acquire control by lease of the railroad of the Tionesta Valley Railway Co., for a term of 10 years, was denied, upon the ground that the proposed lease was not in the public interest. The two companies had officers in common, but only vague evidence of any saving was given; the earnings of the Tionesta Co. were possibly subject to recapture; and the Tionesta Co. was an industrial, with the major portion of its revenue derived from the division of joint rates, making almost impossible a determination of whether or not the connecting lines are in effect granting unlawful preferences.

105 I. C. C. 570, March 7, 1926: The report of the division, in 94 I. C. C. 39 (above), was reconsidered by the entire commission and the previous report and order were affirmed, upon the ground that the operations and accounts of the two companies should not be intermingled, and because the two carriers are over 100 miles apart, and there is no physical connection between them.

PURCHASE OF STOCK AND LEASE OF PROPERTY

Applications approved.

70 I. C. C. 20, June 28, 1921: The Chicago, Milwaukee & St. Paul Railway Co. was authorized to acquire control, by lease, of the property (both owned and leased) of the Chicago, Terre Haute & Southeastern Railway Co. and by purchase of 40,000 shares of outstanding stock. The acquisition of stock was in order to control the organization for purposes of financing and better to protect the leasehold interests. The lease was for a term of 999 years. It contained an option to purchase, but consideration of this proposal was deferred. A supplemental order, under section 20a, was issued November 4, 1921 (70 I. C. C. 594).

71 I. C. C. 631, May 16, 1922: The New York Central Railroad Co. was authorized to acquire control of the Chicago River & Indiana Railroad Co. by the purchase of all the capital stock, and the Chicago River & Indiana Railroad Co. was authorized to acquire control of the properties (owned and leased) of the Chicago Junction Railway Co., by lease, for a term of 99 years, and thereafter, at the option of the lessee, in perpetuity. The application also sought authority to purchase the physical property of the Chicago Junction Railway Co., but this was denied. The order was by the entire commission.

In the Chicago Junction case (1924) (264 U. S. 258), the order of the commission was declared void, upon the ground that it was admitted by the motion to dismiss that the order was unsupported by evidence that the proposed acquisition "will be in the public interest."

72 I. C. C. 832, October 31, 1922: The Atchison, Topeka & Santa Fe Railway Co. was authorized to acquire control of the Santa Fe & Los Angeles Harbor Railway Co. by purchase of 495 shares of its capital stock (out of the total issue of 500 shares, the remaining 5 shares to be purchased by the directors of the Harbor Co.) and by the lease of the line of railroad to be constructed by the Harbor Co. for a period of 10 years and thereafter from year to year, subject to the right of either party to terminate upon 90 days' written notice.

76 I. C. C. 84, December 4, 1922: Missouri—Kansas—Texas reorganization. The commission approved the reorganization, which involved acquisition of control by the purchase of all or a majority of the stock of certain railroad companies, the acquisition of four leaseholds, and the purchase of capital stock, in amounts less than a majority, of certain terminal companies.

76 I. C. C. 508, February 6, 1923: The Southern Pacific Co. was authorized to acquire control, by lease, of all the property of the Central Pacific Railway Co., and by ownership of the stock of the Central Pacific Railroad Co. a continuance of the existing control which had been held prohibited by the Sherman Act (United States *v.* Southern Pacific Co., 259 U. S. 214). The properties were to be leased until December 31, 1984, subject to termination by the commission if and when found by the commission to interfere with the consummation of the final plan of consolidation, and the outstanding capital stock was to be owned during the continuance of the lease. The report was by the entire commission, and the application was approved subject to nine conditions providing that the Southern Pacific Co. shall join and cooperate with the Union Pacific Railroad Co. in maintaining the through service on certain designated lines, in preventing discrimination in rates, and in routing traffic; and that the lease should become null and void whenever the commission finds that the control interferes with the consummation of the complete plan of consolidation, and should be subject to termination by the commission in such case; and that the Southern Pacific should not voluntarily sell or pledge, or otherwise dispose of, the capital stock of the Central Pacific Co., or any part thereof, without the consent of the commission.

In United States *v.* Southern Pacific Co. (D. Utah, 1923), upon the remanding of the case by the Supreme Court (259 U. S. 214), the final decree was entered and the railroads were relieved from the operation of the Sherman law so far as necessary to enable them to do anything authorized or approved by the commission.

82 I. C. C. 100, August 3, 1923: Illinois Central Railroad Co. was authorized to acquire control of the Southern Illinois & Kentucky Railroad Co. by the purchase of its entire capital stock, and of a line of railroad to be constructed by the Southern Illinois & Kentucky Railroad Co., by lease, in accordance with the terms of a prior lease. It was contended that the application should be denied upon the ground, among others, that the proposed acquisition would violate a provision of the Illinois constitution. The division's order was reviewed by the entire commission and affirmed. (86 I. C. C. 371 (February 5, 1924).)

86 I. C. C. 122, December 26, 1923: The El Paso & Southwestern Railroad Co. was authorized to acquire control, through the exchange of certain securities, of certain of its subsidiaries indirectly controlled through holding companies, and of control of certain subsidiaries; and the El Paso & Southwestern Railroad Co. was authorized to acquire control, through exchange of capital stock, of certain subsidiaries of the El Paso & Southwestern Co., and the El Paso & Southwestern Railroad Co. was authorized to acquire control of the properties of certain of the subsidiaries of the El Paso & Southwestern Co., by lease, for a period not exceeding 10 years.

86 I. C. C. 567, March 25, 1924: The Lehigh Valley Railroad Co. was authorized to acquire control of the Delaware, Susquehanna & Schuylkill Railroad Co. by ownership of its capital stock and by lease. The existing control had been held unlawful by the Supreme Court in United States *v.* Lehigh Valley Railroad Co. (1920) (254 U. S. 255).

90 I. C. C. 732, September 30, 1924: The Southern Pacific Co. was authorized to acquire control of the carriers comprising the El Paso & Southwestern system by stock ownership through the purchase of the interest of the El Paso & Southwestern Co. therein, and by lease from the Southwestern of the lines of railroad owned by it and by assignment from the Southwestern of the leases under which the Southwestern was operating the existing railways of the Southwestern system, including in the assignment any and all trackage and operating rights of the Southwestern over other lines. The request of the attorney general of the State of Texas that the order be conditioned as not to violate the provisions of the constitution and statutes of that State relating to consolidation of Texas companies with foreign corporations, the acquisition of control by one corporation of another corporation owning or having under its control a parallel or competing line, and the leasing of Texas corporations by foreign corporations, was not granted. The application was approved upon the condition that the Southern Pacific Co. should not sell, pledge, or otherwise dispose of the capital stock of the companies, control of which was authorized, or any part thereof, without the consent of the commission.

94 I. C. C. 5, October 21, 1924: The Kansas City, Fort Scott & Memphis Railway Co. was authorized to acquire control, through stock ownership, of the Kansas City, Clinton & Springfield Railway Co., and the St. Louis-San Francisco Railway Co. (which controls the Fort Scott Co. through stock ownership and operates its railroad under a lease for 99 years) was authorized to acquire control by lease of the railroad of the Clinton Co., for a term

identical with the term of the lease of the properties of the Fort Scott Co. to the Frisco (for a term expiring June 12, 2000, with a covenant for renewal, at the expiration of the term, and each renewal term, for a further period of 99 years).

94 I. C. C. 363, January 6, 1925: The Monongahela Railway Co. was authorized to acquire control (a) of the Scotts Run Railway Co., by the purchase of its capital stock and by lease of all its properties, rights, and franchises (except the franchise to be a corporation), for the remaining period of the lessor's corporate existence, and (b) of the Monongahela & Ohio Railroad Co. by the purchase of its capital stock.

94 I. C. C. 701, March 25, 1925: The Southern Pacific Co. was authorized to acquire control, by the purchase of the capital stock, of the San Antonio & Aransas Pass Railway Co., and the Galveston, Harrisburg & San Antonio Railway Co. was authorized to acquire control of the railroads, equipment, appurtenances, leases, rights, etc., of the San Antonio & Aransas Pass Railway, by lease, for a period of one year and thereafter until terminated by 30 days' notice.

99 I. C. C. 193, June 6, 1925: The Atlantic Coast Line Railroad Co. was authorized to acquire control of the Moore Haven & Clewiston Railway Co. by the purchase of its capital stock, and to acquire control of the railroad of the Moore Haven & Clewiston Railway Co. by a lease for 99 years.

105 I. C. C. 249, December 22, 1925: The Seaboard Air Line Railway Co. was authorized to acquire control of the Charlotte Harbor & Northern Railway Co. by the purchase of its capital stock and by leases. Pending the transfer of the stock, the lease was to be for 12-month periods, and upon the delivery of the stock a lease was to be entered into for 999 years.

105 I. C. C. 639, March 11, 1926: The Utah Railway Co. was authorized to acquire control of the National Coal Railway Co. by the purchase of its capital stock and by lease for the term of the corporate existence of the lessor (100 years), less one day.

105 I. C. C. 792, April 1, 1926: The Southern Pacific Co. was authorized to acquire control of the Dayton-Goose Creek Railway Co. by the purchase of its capital stock, and the Texas & New Orleans Railroad Co. (a Southern Pacific subsidiary) was authorized to acquire control of the railroad of the Dayton-Goose Creek Railway Co. by lease, for a term of one year and thereafter until terminated upon 30 days' notice.

105 I. C. C. 800, April 7, 1926: The Chesapeake & Ohio Railway Co. was authorized to acquire control of the Pond Fork & Bald Knob Railroad Co. by purchase of its capital stock, and of the railroad of that company by lease of its railroad, rights, franchises, and other property, for the term of one year and thereafter, subject to the right of either party to terminate upon 30 days' notice.

Application denied.

The Nickel Plate merger, decided March 2, 1926. 105 I. C. C. —: The application of the New York, Chicago & St. Louis Railway Co. to acquire control of the Chesapeake & Ohio Railway Co., the Hocking Valley Railway Co., Erie Railroad Co., Pere Marquette Railway Co., and the New York, Chicago & St. Louis Railroad Co. by (a) leases for 999 years of the lines of railway and other properties owned by such companies and by assignment from them of leases under which such companies operating existing railways of its system not owned by it, or by subleases, and by the assignment of any and all trackage and operating rights for foreign lines; and (b) by the acquisition of at least a majority of the capital stock of the Chesapeake, the Hocking, the Erie, and the Pere Marquette. The application was denied. The majority of the commission found that the proposed acquisition would be in the public interest, but found that the contracts, terms, and conditions of the proposed acquisition of control were not just and reasonable. Commissioners Hall, Woodlock, and Taylor did not participate in the disposition of the case; Commissioners Eastman (Commissioner McManamy joining with him), Aitchison (Commissioner Campbell joning with him) concurred. Commissioner Lewis dissented, upon the ground that the commission should have taken the next step and indicated what it would consider to be just and reasonable terms.

PURCHASE OF STOCK

Applications approved.

65 I. C. C. 124, August 23, 1920: The Pittsburgh & West Virginia Railway Co. was authorized to acquire control of the West Side Belt Railroad Co. by purchase of its capital stock. The applicant controls the Pittsburgh Terminal Railroad & Coal Co., through ownership of its entire outstanding capital stock, and this company owns 21,300 shares of the total outstanding capital stock of 21,600 shares of the West Side Co., the remaining 300 shares of which are owned by the applicant.

67 I. C. C. 513, April 29, 1921: The Cleveland, Cincinnati, Chicago & St. Louis Railway Co. was authorized to acquire control of the Evansville, Indianapolis & Terre Haute Railway Co. by purchase of its entire capital stock.

67 I. C. C. 752, June 14, 1921: The Pennsylvania Railroad Co. was authorized to acquire control of the Pittsburgh, Fort Wayne & Chicago Railway Co. by the purchase of its special guaranteed stock. All this stock is owned by the Pennsylvania Co., and all the stock of the Pennsylvania Co. is owned by the Pennsylvania Railroad Co.

70 I. C. C. 413, August 30, 1921: The Pere Marquette Railway Co. was authorized to acquire control of the Flint Belt Railroad Co. by the purchase of not more than 10,000 shares of its capital stock. The incorporators of the Flint were the officials and employees of the Marquette, and it was stated that the Marquette was the only available purchaser, and that the Flint's railroad could not be built unless the Marquette is permitted to acquire this stock. The Marquette proposes to buy substantially all the stock proposed to be issued by the Flint.

71 I. C. C. 124, February 11, 1922: The Chicago, Milwaukee & St. Paul Railway Co. was authorized to acquire control of the Chicago, Milwaukee & Gary Railway Co. by the purchase of its entire outstanding stock.

72 I. C. C. 96, June 27, 1922: The New York Central Railroad Co. was authorized to acquire further control of the Cleveland, Cincinnati, Chicago & St. Louis Railway Co. (the Big Four) by the purchase of additional preferred and common stock. The New York Central owned at that time 52.97 per cent of the total Big Four stock outstanding, but this did not constitute complete control, since the consent of the majority of the preferred stock owners was required before the issuance of any evidence of funded debt or the making of any lease of railway property. The acquisition was to be made by an exchange of securities. The decision was by the entire commission, Commissioner Potter concurring and Commissioner Eastman dissenting.

82 I. C. C. 745, December 12, 1923: The Denver & Rio Grande Western Railroad Co. was authorized to acquire certain stock of the Rio Grande Junction Railway Co. and of the Rio Grande & Southwestern Railroad Co.

86 I. C. C. 631, April 2, 1924: The Kansas City, Kaw Valley & Western Railway Co., and the Kansas City Southern Railway Co. were each authorized to acquire by purchase one-half of the capital stock of the Kansas & Missouri Railway & Terminal Co. Authority was also sought to acquire the bonds of the Terminal Co., but was denied upon the ground that the acquisition of the bonds did not give other or further control than was to be procured through the acquisition of the stock.

86 I. C. C. 808, April 25, 1924: The Missouri Pacific Railroad Co. was authorized to acquire an amount of the noncumulative preferred stock to be issued by the Texas & Pacific Railway Co. sufficient to permit it to exchange certain bonds held by it for the stock.

90 I. C. C. 161, June 9, 1924: The Missouri Pacific Railroad Co. was authorized to acquire one-half of the common stock of the Denver & Rio Grande Western Railroad Co. from the Western Pacific Railroad Corporation, which then held the entire outstanding shares of such stock. The decision was by the entire commission, Commissioners Eastman, Aitchison, Cox, and McManamy dissenting.

90 I. C. C. 262, June 12, 1924: The New Orleans, Texas & Mexico Railway Co. was authorized to acquire control of the International-Great Northern Railroad Co. by the purchase of its capital stock, upon the condition that if the commission, in a proceeding upon an application filed by the Missouri Pacific Railroad Co. for authority to acquire control by purchase of the capital stock of the applicant, should find that it was not in the public interest for the applicant to hold the stock of the International-Great North-

ern, that the applicant should within 90 days thereafter sell and dispose of the stock. (For the supplemental order authorizing the unconditional acquisition, see 94 I. C. C. 191, 205.) The State of Texas had protested against the acquisition, upon the ground that it was prohibited by the laws of Texas. The decision was by the entire commission, Commissioners Eastman and Campbell dissenting.

94 I. C. C. 191, December 8, 1924: The Missouri Pacific Railroad Co. was authorized to acquire control of the New Orleans, Texas & Mexico Railway Co. by purchase of capital stock. The applicant at the time had an option for the purchase of 37,500 shares, and this application was for authority to acquire control through the purchase of additional shares. The decision was by the entire commission, Commissioners Eastman, McManamy, and Campbell dissenting.

94 I. C. C. 224, December 8, 1924: The Baltimore, Chesapeake & Atlantic Railway Co. was authorized to acquire control of the Baltimore & Eastern Railroad Co. by purchase of capital stock.

94 I. C. C. 279, December 20, 1924: The Monongahela Connecting Railroad Co. was authorized to acquire control of the Eastern Railroad Co. by purchase of its capital stock. The stock of both companies was held by one corporation, and it was proposed ultimately to consolidate or merge the property of the two companies.

99 I. C. C. 169, June 1, 1925: The Illinois Central Railroad Co. was authorized to acquire control of the Gulf & Ship Island Railroad Co. by the purchase, through the Mississippi Valley Co. (its subsidiary), of the entire outstanding capital stock.

99 I. C. C. 382, July 8, 1925: The Western Pacific Railroad Co. was authorized to acquire control of the lines and other property of the Sacramento Northern Railroad upon transfer thereof to the Sacramento Northern Railway, through the purchase of the railway's capital stock, and by the purchase of all of the bonds of the railroad company.

105 I. C. C. 35, November 2, 1925: The New Orleans, Texas & Mexico Railway Co. was authorized to acquire control of the San Antonio, Uvalde & Gulf Railway Co. by purchase of all the outstanding capital stock and bonds of that company. The application also sought authority for the purchase of the physical properties of a pipe-line company and also of a railroad engaged purely in intrastate transportation and not authorized to engage in interstate commerce, but this was denied on the ground that the commission was without jurisdiction.

105 I. C. C. 43, November 2, 1925: The Wabash Railway Co. was authorized to acquire control of the Ann Arbor Railroad Co. by purchase of capital stock.

105 I. C. C. 99, November 14, 1925: The St. Louis-San Francisco Railway Co. was authorized to acquire control of the Muscle Shoals, Birmingham & Pensacola Railroad Co. by the purchase of all the capital stock authorized to be issued in the same proceeding.

105 I. C. C. 131, November 14, 1925: The Kansas City Southern Railway Co. was authorized to acquire control of the Kansas City & Grandview Railway Co. by purchase of its capital stock.

105 I. C. C. 282, January 2, 1926: The Southern Pacific Co. was authorized to acquire control of the Holton Inter-Urban Railway Co. by the purchase of capital stock.

105 I. C. C. 349, January 16, 1926: The Atchison, Topeka & Santa Fe Railway Co. and the Western Pacific Railroad Co. were each authorized to purchase one-half of the capital stock of the Alameda Belt Line.

105 I. C. C. 383, January 25, 1926: The Seaboard Air Line Railway Co. was authorized to acquire control of the Tavares & Gulf Railroad Co. by purchase of capital stock. The decision was by the entire commission, Chairman Eastman dissenting.

105 I. C. C. 499, February 12, 1926: The Pennsylvania Railroad Co. was authorized to acquire control of the West Allegheny Railroad Co. by purchase of capital stock.

105 I. C. C. 543, February 23, 1926: The Chicago & North Western Railway Co. was authorized to acquire further control of the Chicago, St. Paul, Minneapolis & Omaha Railway Co. by purchase of stock. The North Western then owned about 50.04 per cent of the outstanding stock. The acquisition was proposed as a step toward complete unification of operations through a lease or some form of consolidation or merger when permitted by law.

105 I. C. C. 804, April 6, 1926: The Chesapeake & Ohio Railway Co. was authorized to acquire control of the Island Creek Railroad Co. by purchase of all the capital stock. The applicant operates the Island Creek line under a 20-year lease dated April 5, 1912.

Applications denied.

71 I. C. C. 747, May 27, 1922: The Cleveland, Cincinnati, Chicago & St. Louis Railway Co. filed its application for authority to purchase all the outstanding capital stock of the Peoria & Eastern Railway Co. and all its outstanding bonds. The applicant then owned $5,000,100 par value of its capital stock, of which there was outstanding $9,994,200 out of a total authorized capital of $10,000,000. The application was denied on the ground that the acquisition did not give the applicant any other or further control than that which it had.

72 I. C. C. 273, July 21, 1922: The Chicago, Rock Island & Pacific Railway filed an application for authority to acquire 25.8 per cent of the total outstanding capital stock of the Chicago & Alton Railroad Co. The acquisition was to be made in pursuance of a compromise after several years' litigation. The application was dismissed on the ground that it did not involve the acquisition of control.

72 I. C. C. 377, August 2, 1922: The New Orleans, Texas & Mexico Railway Co. filed an application for authority to acquire control of the Dayton-Goose Creek Railway Co. by purchase of its capital stock. The proposed purchase price was far in excess of the investment in road and equipment, less depreciation. The controlling reason for the proposed acquisition was to secure traffic from a competitor. The application was denied upon the ground that the record did not justify a conclusion by the commission that the price to be paid was a reasonable one. Upon a further consideration by the entire commission, the order was approved and the application denied. (82 I. C. C. 27 (July 16, 1923).)

OPERATING AGREEMENTS

Applications approved.

70 I. C. C. 470, September 21, 1921: A contract made by the Boston & Albany Railroad Co. with the Providence, Webster & Springfield Railroad Co., providing that the Boston shall perform all transportation upon and over the railroad of the Providence (through the New York Central Railroad Co., the lessee of the Boston) was approved and authorized.

71 I. C. C. 68, January 16, 1922: A contract made by the Pittsburgh & West Virginia Railway Co. with the West Side Belt Railroad Co., providing that the railroad properties of the two companies shall be operated by the Pittsburgh Co., was approved and authorized. The entire capital stock of the Belt Co. is owned by the Pittsburgh Co.

71 I. C. C. 190, March 4, 1922: The Union Pacific Railroad Co. was authorized to acquire control of the Saratoga & Encampment Railroad under a contract providing for its operation of the property for a period of three years, with an option to purchase at the end of such period. The Encampment had filed an application for the abandonment of its line, and the proposed acquisition was suggested as an experiment in an effort to avoid abandonment.

72 I. C. C. 459, August 12, 1922: The New York, Chicago & St. Louis Railroad Co. was authorized to acquire control of the property of the Lake Erie & Western Railroad Co. by a contract providing for operation, management, and control by the Nickel Plate of the railroads and properties of both companies.

79 I. C. C. 312, May 9, 1923: The Gulf, Mobile & Northern Railroad Co. was authorized to acquire control of the Meridian & Memphis Railway Co. by means of a proposed operating contract, under which the railroads and properties of the two companies are to be operated, managed, and controlled by the Gulf Co.

105 I. C. C. 369, January 12, 1926: The operating contract between the Pittsburgh & West Virginia Railway Co. and the West Side Belt Railroad Co., approved in 71 I. C. C. 68 (above), was continued for a period of 10 years.

Application denied.

72 I. C. C. 151, July 6, 1922: The New York, Chicago & St. Louis Railroad Co. and the Lake Erie & Western Railroad Co. filed a joint application for the approval of a proposed contract for the joint purchase, exchange, and use of materials and supplies. The application was denied upon the ground that the "control," under paragraph (2) of section 5, did not include merely control by one carrier in the purchase of materials and supplies for another carrier and that paragraph (2) had no application.

Respectfully submitted.

ELLSWORTH C. ALVORD,
Assistant Counsel, Office of the Legislative Counsel, House of Representatives.

(Whereupon, at 12 o'clock noon, the committee adjourned.)

INTERSTATE COMMERCE COMMISSION,
Washington, May 13, 1926.

Hon. JAMES S. PARKER,
Chairman Committee on Interstate and Foreign Commerce, House of Representaives, Washington, D. C.

MY DEAR CHAIRMAN: Since forwarding to you our report on H. R. 11212, under date of May 11, relating to the consolidation of railroads, I received the attached memorandum from Commissioner Taylor with the request that it be brought to your attention.

Respectfully submitted.

JOHN J. ESCH, *Commissioner.*

[H. R. 11212]

MAY 13, 1926.

Memorandum to Commissioner Esch:

While the letter to the Hon. James S. Parker, chairman of the House Committee on Interstate and Foreign Commerce, was under consideration by the commission on last Monday, I overlooked making the following suggestion:

Without objection from the commission, under date of February 8, I addressed a letter to Senator Underwood, of which I attach a copy. In that letter I asked Senator Underwood to use his good offices in having included in the proposed amendment to the transportation act, then before the Senate committee, this clause:

"No consolidation to be approved which is found by the Interstate Commerce Commission to create a preference between the ports of one State over the ports of another."

This was an individual act and not that of the commission, but as it was only an attempt to have incorporated into the transportation act what is, in effect, a quotation from the Constitution, I can think of no reasonable objection that anyone could have to its being done. It is true that such a suggestion might be considered idle supererogation, as Congress can neither add to, nor take from, a limitation placed upon its power by the Constitution, except for the reason that if this clause is in the transportation act, it would only be necessary to prove that any consolidation contrary thereto did not comply with the act, whereas if this clause is not included, and such a consolidation was attempted, it would be necessary to prove the unconstitutionality of the consolidation.

Can you properly add this suggestion to your letter to Chairman Parker? Or if there is objection to your doing this, can you send him a copy of this communication and my letter to Senator Underwood for such merit as the suggestion may have, as an individual contribution to the subject under consideration?

TAYLOR.

FEBRUARY 8, 1926.

Hon. O. W. UNDERWOOD,
United States Senate, Washington, D. C.

MY DEAR SENATOR: At a meeting in conference of the Interstate Commerce Commissioners this morning the subject of a recent communication addressed

by the chairman of the commission to the chairman of the Senate Committee on Interstate Commerce was under consideration. My attention had been called to the fact that the chairman of the commission had mentioned in this communication that I was not present when it was being formulated, and I asked permission of the commission, upon my own initiative, to suggest to the Committee on Interstate Commerce, through you, the desirability of including a clause in the amended transportation act reading as follows:

"No consolidation to be approved which is found by the Interstate Commerce Commission to create a preference between the ports of one State over the ports of another."

For your convenience I am sending copy of the pending bill with this clause inserted. There was no objection on the part of any member of the Interstate Commerce Commission to my doing this.

Sincerely yours,

R. V. TAYLOR, *Commissioner.*

MERRILL, OLDHAM & CO. (INC.),
35 Congress Street, Boston, June 11, 1926.

Hon. JAMES S. PARKER,
Chairman Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D. C.

DEAR MR. PARKER: In accordance with your suggestion at the hearing in Washington the other day, I am forwarding to you copy of a pamphlet dealing with the grouping of the railroads of the country, which I prepared and which was published by the Investment Bankers' Association in November, 1921.

I am also forwarding statements, bound together, of my testimony before the Interstate Commerce Commission in regard to consolidations under dates of November 23, 1923, and January 12, 1924, and statement before the Senate Committee on Interstate and Foreign Commerce under date of May 21, 1924.

I have taken the liberty of sending a duplicate of this matter to Mr. Hoch, as this material is forwarded to you for use by the committee as the result of questions which were asked by him.

Trusting that your bill will be favorably reported, I remain,

Very truly yours,

JOHN E. OLDHAM.

MAY 21, 1924.

To the Committee on Interstate and Foreign Commerce of the United States Senate.

Senator Cummins has asked me to appear before this committee to-day to present the results of my studies relating to the subject of railroad consolidations, and to say what I will concerning Senate bill 2224 which he had introduced.

To comply with his invitation I have prepared a memorandum which I desire to read to the committee. In this memorandum I have undertaken to set forth in broad outline, rather than in detail, my understanding of the results which a general consolidation procedure will accomplish, to show why these results are essential to the success of any system of public regulation of the railroads, and to indicate the principles which should be followed in grouping the railroads of the country into a few well-organized systems. I point out certain respects in which it seems to me the consolidation provisions of the transportation act should be amended, and in this connection I refer briefly to Senator Cummins's bill.

Respectfully,

JOHN E. OLDHAM.

TESTIMONY OF JOHN E. OLDHAM BEFORE THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE OF THE UNITED STATES SENATE MAY 21, 1924

Anyone who acquaints himself with the evidence of the numerous witnesses who have appeared before the various committees of Congress during the last 8 or 10 years in relation to the railroad problem will find little or no indication of any substantial opinion that public regulation of the railroads is unnecessary or undesirable. In fact he will find abundant evidence of an almost unanimous opinion that under a policy of private ownership and operation public regulation

is both desirable and necessary in the interests of the public and the owners of the railroads alike. He will find, nevertheless, much conflict of opinion as to the form and character of regulation under which the railroads will be able to operate and furnish the public with adequate and satisfactory service. It is a prerequisite of any system of regulation that it must be such as to produce the same results for all railroads which are subject to it. It is self-evident that it would be much simpler to devise a system of regulation which would produce this required similarity of results for railroads all of which were similar in their characteristics and operated under similar conditions, than it would be to devise a system which would be equally satisfactory for railroads of varied characteristics and operating under widely diverse conditions. The problem which faced Congress in connection with the transportation act, however, was to devise a system of regulation to be applied to railroads of varied characteristics and operating under widely different conditions. It is not too much to say that the record of the various congressional hearings has made it clear that no system of public regulation can be devised and administered so as to produce similar results for all the railroads so long as the railroads to which it is to apply continue to be as different in character and requirements as are the existing railroad units. Nevertheless, it was not possible for Congress to do otherwise than enact a system of regulation based upon average conditions, despite the fact that many of the railroads to which it was to apply were not average in character and did not operate under average conditions.

The system of regulation finally enacted by the Congress was the transportation act of 1920; it was of necessity a system designed to meet average conditions; but it contained a provision for reorganizing the railroads of the country into a limited number of systems so that the new systems would be of similar character and surrounded by similar conditions. This provision was necessary in order that the regulation provided by the act could be applied with uniform results for all the railroads. This, in a word, as I understand it, not only states the purpose to be accomplished by the consolidation of the railroads but also shows why the question of consolidations was so much emphasized in the act. Consolidations are thus seen to be essential for successful public regulation, without which the continuance of a policy of private ownership and operation can scarcely be expected.

That the creation of railroad systems of average or uniform character was the purpose of Congress is apparent not only from the record of the investigations it conducted but also from the act itself which, referring to the contemplated new systems, used the following language:

"The several systems shall be so arranged that the cost of transportation as between competitive systems and as related to the values of the properties through which the service is rendered shall be the same, so far as practicable, so that these systems can employ uniform rates in the movement of competitive traffic and under efficient management earn substantially the same rate of return upon the value of their respective railway properties."

That Congress regarded consolidations as of prime importance is further indicated by the fact that the transportation act directed the Interstate Commerce Commission to proceed as quickly as may be to plan for the consolidation of the railroads of the United States into comparatively few competitive systems of similar character. The prescribed method of procedure was that the commission should prepare and publish a tentative plan of contemplated consolidated systems; that this plan should serve as a basis for public hearings and general discussion of the whole subject; that after such hearings and discussion the commission should adopt and publish a final plan in accordance with which consolidations might be undertaken voluntarily by the railroads; and that after the publication of the final plan no consolidations are to be permitted in the future except such as are in conformity with it, and then only as they may be approved by the commission.

The tenative plan was published by the commission in the summer of 1921. Hearings with relation to it were held throughout the country over a period of substantially two years. Not only the railroads but chambers of commerce and other semipublic organizations of various kinds, representing shippers and the general public have appeared at these hearings and have presented to the commission a very large amount of information relating to traffic relations and movements, industrial conditions and many other matters, allied to or to be affected by, consolidations.

These hearings and the great amount of study and discussion which has been given to the whole subject of consolidations have served to emphasize the advantages which may be expected to follow their consummation. Capitalization corresponding to property values and in sound proportions between indebtedness and equity will be accomplished, joint use of terminals can be increased, the independent existence of roads which can not by themselves make a living from average rates will be terminated. In short, uniformity in character and requirements will take the place of the existing lack of uniformity, and thus success of public regulation will become possible, while the administration of the whole regulatory system will become simpler and easier.

As the hearings have progressed there has been an increasing conviction of the feasibility of consolidations; this has taken the place of a large amount of doubt which was earlier expressed by many. This increasing confidence has come from a realization that the program for railroad consolidations is nothing other than a resumption, under careful governmental supervision, of a process which in earlier days produced such systems as the New York Central, the Pennsylvania, the Atlantic Coast Line, the Atchison, the Union Pacific, and various other systems which have served the public with similar success, and that the result of the process now to be resumed is bound to be the creation of other systems comparable to these in sound capitalization and in ability to serve the public, and thus the creation of a national transportation system composed of none but strong and effective units.

If, then, the object is to provide for railroad systems similar to those just mentioned it may be well to set forth the principles in accordance with which they have been formed and the characteristics which they possess. In this connection I desire to file with the committee copies of an article in which I have discussed these matters, which article was published in the Harvard Business Review for January, 1923, entitled "The Problem of Railroad Consolidations;" and copies of certain testimony, relating to the same subject, I have given at the consoildation hearings conducted by the Interstate Commerce Commission. In the printed article I have shown the composite character of all railroads located in eastern territory between the Hudson and Mississippi and north of the Ohio and Potomac Rivers. The character of this composite is set forth in terms of operating statistics which show the amounts and proportions of the different kinds of traffic it handles and the results of operation are shown in terms of financial statistics. In similar terms I have compared the New York Central System and the Pennsylvania System with this composite or average. The comparison shows that these two systems, singly or combined, are substantially like the composite. In other words, each of these two systems as at present constituted is an average system. These two systems thus represent a situation which it is the object of the consolidation program to establish everywhere, and their existence indicates clearly the nature of the consolidation problem in their territory—it is to group the remaining railroads into other systems each one of which will to an equal extent be similar to the composite or average, or to these two. In the article I point out what I regard as the controlling reasons for the average character and operating results of these two systems. Let me quote a few sentences:

"The striking similarity between the averages made from the combined statistics of the New York Central and the Pennsylvania and from those of all roads in the district, as shown in the preceding tables, need not be a matter of surprise; in fact, it would be a surprise if the figures were not substantially alike. This similarity is the logical result of the way the two systems have been built up so that to-day they extend from one end to the other of the rate district in which they are located and thus share in the varied business of all of its different parts. They cover the territory so completely that they experience the varied operating conditions, both favorable and unfavorable, which are bound to exist in a territory so widely extended. They are examples of the kind of systems which were being formed before the law made further consolidations practically impossible."

In appearing before the Interstate Commerce Commission on the 23d of November last, I used these words:

"It is clear, I think, that to provide for systems which shall be similar to each other in each district of the country it is necessary to provide for systems each one of which shall be similar to the composite of all railroads in the district; that is, that each system shall be an average system. The surest and, I think, the only dependable way of securing this result is to plan for systems each one

of which shall extend widely through its reat district. Under such circumstances all systems will share in the varied traffic of the territory and experience its varied operating conditions."

The situation thus depicted in eastern territory is paralleled by the Southern Railway and the Atlantic Coast Line-Louisville & Nashville system in the South and by the river-to-coast systems in the West. The figures I used in my studies and comparisons were the figures of the "test period," the three-year period ending June 30, 1917. In recent months I have made similar analyses and comparisons of the financial results on the basis of the figures for 1923, and I find that these later figures show substantially the same comparative relationships as were revealed by the earlier figures. Herewith I file with the committee copies of these statistical analyses. The fact that the figures show the same relative positions during the two periods leads to the conclusion that we are dealing with a situation the factors of which are constant. In my judgment the similarity of these analyses gives ample evidence that the consolidation program may be undertaken with assurance as to the results which will follow its completion.

During the past 10 years substantial progress has been made in providing relief from the unsatisfactory transportation conditions which existed before the war. Six years of hearings before committees of Congress resulted in legislation which has provided a system of regulation that has received the general approved of all who desire the continuation of private ownership and operation as a national railroad policy. Four years of experience with the transportation act have demonstrated the soundness of the principles upon which it is based, though it may be freely admitted that in some matters of detail amendments could be made with advantage.

In this period of four years much progress has been made also in the direction of consolidations as contemplated by the act even though few actual consolidations of importance have been completed. As a result of the publication of the tentative plan and of the many hearings and country-wide discussion of the subject the advantages to be derived from consolidations are better understood, and their importance and necessity are more generally appreciated. There is a much clearer conception of the lines along which it is desirable to proceed to create a national system of transportation. Because of its possession of the abundant information contained in the testimony of railroad officials, shippers and other interested parties, the Interstate Commerce Commission is now for the first time in a position to determine the merits or demerits of every proposed consolidation and to determine whether it is in the public interest and will further the general purposes for which consolidations are prescribed. All this denotes progress toward final accomplishment.

Along with this growing realization of the desirability of the regrouping of the many railroads of widely different character into a few systems of substantially uniform character and of sound organization has come a realization of the fact that little further progress can be made without amendments to the transportation act. In spite of the fact that there is general agreement as to the desirability of consolidations, and the further fact that in many instances there is a willingness on the part of the railroads to proceed with consolidations, yet there is little prospect of actual consolidations in the near future. The principal obstacles to progress may be stated as follows:

First. As the transportation act is interpreted by the Interstate Commerce Commission it does not confer upon the commission authority to approve general consolidations prior to the completion and publication of its final plan. The determination of the final plan of consolidations by the commission is a difficult task not only because of the voluminous record of the hearings which must be taken into consideration but also because of the difficulty of securing agreement as to a single plan of consolidations, whereas, as the testimony shows, any one of several groupings of the railroads would be equally effective to secure the necessary result. Because of this fact it seems to me to be unwise to restrict procedure to a single plan. Instead of one single prescribed procedure there should be opportunity for any procedure which will be effective to create railroad systems of the desired character. In other words, the commission ought to be empowered to adopt alternative plans. Moreover, since the commission possesses information which will enable it to protect the public interest in all cases, the commission may well be authorized to approve any consolidation which may be proposed even before the adoption of its own plan if it finds such proposed consolidation to be of public advantage and not obstructive to its whole contemplated program.

Second. The law requires that every railroad shall be included in some one of the consolidated systems to be prepared by the commission, whereas the hearings have made it clear that in some cases, more especially with relation to terminal properties, joint ownership or control will better serve the public interest. The whole procedure of the commission would be simplified and the public advantage would be furthered if the commission were given a wider discretion in allocating such properties.

Third. The law apparently requires that the groupings are to be made by the sole method of an actual merging of the different properties into one single property under a single corporate ownership, whereas it has become clear that in some cases at least the desired result could be more easily attained by using such devices as leases, stock controls, etc. It is to be observed that neither the New York Central nor the Pennsylvania, nor, in fact, any existing railroad system which can be taken as a type for the systems which are to be formed, is a consolidated system in the sense in which the term is apparently used in the transportation act, namely, a system all the property of which has been merged into one corporate ownership. In each of these systems there are many corporations related to each other or to a parent company by leases, stock controls, or other devices of ownership or control. Nevertheless, each one of these systems meets the required standards because each is a single system in ownership and control and as a whole unit possesses the average character which is essential to assure uniform results for all systems. If the law allowed the new systems to be formed by the use of leases, stock controls, and other devices of ownership or control as well as by actual mergers the whole process of consolidations would be simplified and expedited.

My understanding of the principal features of the bill introduced by Senator Cummins (S. 2224) is that it allows the commission to adopt alternative plans for the grouping of the railroads and to assure the joint use of terminals by two or more systems when the public interest will be served thereby; that it permits the formation of railroad systems of the desired character by merger, lease, or stock control even before the adoption of any plan of consolidation by the commission; but only with the approval of the commission when found to be in the public interest and not inconsistent with the whole project; and that it assures to the commission the full powers given to it by the transportation act as to the amount and form of the capitalization of every new system, and as to other terms and conditions with which it may be surrounded. Furthermore, it empowers the commission to establish committees to further the creation of the individual systems if voluntary consolidations have not been effected by the time the final alternative plans have been adopted. It seems to me that the creation of these committees should be deferred for a reasonable period after the adoption of the plan, so as to give the railroads an opportunity to comply voluntarily with its provisions. And finally the bill makes possible Federal incorporation for the new national systems.

I do not pretend to analyze the bill in detail. I am, however, in full sympathy with its main purpose. I am convinced that the inclusion into a comparatively few railroad systems of substantially all the railroads of the country is essential for the furnishing of adequate service, for the continuation of private ownership under public regulation, and for the simplification of regulation. Leases and stock controls may be as effective to accomplish desirable groupings as are actual mergers, and they may be possible where mergers are not. I think they should be made available. If the procedure contemplated by the bill is made possible I believe the necessary process will get under way, that voluntary action on the part of the railroads will accomplish a large part of it, and that the necessity for the committee which the bill provides for will be comparatively small. Under Federal incorporation the new systems will escape the embarrassments which arise from the conflicts of the laws of different states, while they will be subject to regulation no less than at present. This provision also will materially assist procedure.

Statement based on averages for the "Test period" (three-year period ended June 30, 1917)

	1 Miles operated	2 Railway operating revenues	3 Railway operating expenses and railway tax accruals (excluding maintenance)	4 Maintenance	5 Railway operating expenses and railway tax accruals (3+4)	6 Balance of equipment and joint facility rents	7 Railway operating expenses, railway tax accruals, and equipment and joint facility rents (5+6)	8 Railway operating income (2−5)	9 Net railway operating income (8−6)
Eastern:									
New York Central	13,284.97	$369,105,875	$164,613,743	$99,990,610	$264,604,353	+$4,197,024	$268,801,377	$104,501,522	$100,304,498
Pennsylvania	13,446.40	457,733,861	205,102,070	143,762,283	348,864,353	+4,700,825	353,565,178	108,869,508	104,168,683
Buffalo	12,775.72	281,591,905	122,139,388	81,658,925	203,798,313	+3,364,023	207,162,334	77,793,592	74,429,569
Baltimore & Ohio–Reading	11,340.40	268,730,621	119,440,928	75,811,633	195,252,561	+9,724,194	204,976,755	73,478,060	63,753,866
Southern:									
Atlantic Coast Line–Louisville & Nashville	12,566.15	123,571,573	52,953,438	38,509,105	91,462,543	−2,879,002	88,583,541	32,109,030	34,988,032
Southern	13,769.44	140,025,471	62,648,098	40,465,815	103,113,913	+768,860	103,882,773	36,911,558	36,142,698
Western:									
Illinois Central–St. Paul	27,602.44	279,494,242	123,441,113	84,695,835	208,136,948	+787,521	208,924,469	71,357,294	70,569,773
Southern Pacific	22,691.32	259,943,174	116,312,589	70,934,751	187,247,340	+1,000,137	188,247,477	72,695,834	71,695,697
Atchison	25,691.88	274,388,071	111,987,152	84,301,273	196,288,425	+2,784,064	199,072,489	78,099,646	75,315,582
Union Pacific–Northwestern	24,081.91	280,717,348	120,167,327	76,090,245	198,257,572	+2,314,468	200,572,040	82,459,776	80,145,308
Great Northern–Northern Pacific	29,306.85	306,768,764	123,821,245	78,322,398	202,143,643	−324,793	201,818,850	104,625,121	104,949,914
		Per cent	*Per cent*	*Per cent*	*Per cent*	*Per cent*	*Per cent*	*Per cent*	*Per cent*
Eastern:									
New York Central		100	44.6	27.1	71.7	+1.1	72.8	28.3	27.2
Pennsylvania		100	44.8	31.4	76.2	+1.0	77.2	23.8	22.8
Buffalo		100	43.4	29.0	72.3	+1.2	73.5	27.7	26.5
Baltimore & Ohio–Reading		100	44.5	28.2	72.7	+3.6	76.3	27.3	23.7
Southern:									
Atlantic Coast Line–Louisville & Nashville		100	42.8	31.2	74.0	−2.3	71.7	26.0	28.3
Southern		100	44.7	29.0	73.7	+.5	74.2	26.3	25.8
Western:									
Illinois Central–St. Paul		100	44.1	30.3	74.4	+.3	74.7	25.6	25.3
Southern Pacific		100	44.7	27.3	72.0	+.3	72.3	28.0	27.7
Atchison		100	40.8	30.7	71.5	+1.0	72.5	28.5	27.5
Union Pacific–Northwestern		100	42.8	27.8	70.6	+.8	71.4	29.4	28.6
Great Northern–Northern Pacific		100	40.3	25.5	65.8	−.1	65.7	34.2	34.3

Statement based on 1923 figures

	1 Miles operated	2 Railway operating revenues	3 Railway operating expenses and railway tax accruals (excluding maintenance)	4 Maintenance	5 Railway operating expenses and railway tax accruals (3+4)	6 Balance of equipment and joint facility rents	7 Railway operating expenses railway tax accruals, and equipment and joint facility rents (5+6)	8 Railway operating income (2−5)	9 Net railway operating income (8−6)
Eastern:									
New York Central	13,575	$753,565,591	$339,714,820	$277,779,944	$617,484,764	+$1,304,733	$618,799,497	$136,080,827	$134,766,094
Pennsylvania	13,812	868,517,877	418,679,978	328,004,868	746,684,846	+14,058,016	760,742,862	121,833,031	107,775,015
Buffalo	12,827	564,668,464	259,158,508	214,439,933	473,598,441	+464,812	474,053,253	91,070,023	90,605,211
Baltimore & Ohio–Reading	11,802	546,415,839	251,103,001	199,169,164	450,272,165	+11,444,703	461,716,868	96,143,674	84,698,971
Southern:									
Atlantic Coast Line–Louisville & Nashville	12,839	279,813,895	130,655,464	103,298,533	233,953,997	−342,178	233,611,819	45,859,898	46,202,076
Southern	13,847	287,400,431	134,537,166	95,477,780	230,014,946	+7,346,750	237,361,696	57,385,485	50,038,735
Western:									
Illinois Central–St. Paul	28,486	520,403,349	246,502,893	190,653,432	437,156,325	+9,141,551	446,297,876	83,247,024	74,105,473
Southern Pacific	23,600	468,221,491	224,050,864	156,059,808	380,110,672	+11,479,255	391,589,927	88,161,818	76,682,563
Atchison	25,986	470,123,228	213,574,991	184,116,618	397,691,609	+1,325,189	399,016,798	72,431,619	71,106,430
Union Pacific–Northwestern	24,378	492,995,923	231,632,959	177,068,230	408,701,189	+11,453,281	420,154,470	84,294,734	72,841,453
Great Northern–Northern Pacific	29,426	477,607,047	232,329,920	165,607,051	397,936,971	+424,547	398,361,518	79,670,076	79,245,529
		Per cent	*Per cent*	*Per cent*	*Per cent*	*Per cent*	*Per cent*	*Per cent*	*Per cent*
Eastern:									
New York Central		100	45.0	36.9	81.9	+0.2	82.1	18.1	17.9
Pennsylvania		100	48.2	37.8	86.0	+1.6	87.6	14.0	12.4
Buffalo		100	45.8	38.0	83.8	+.1	83.9	16.2	16.1
Baltimore & Ohio–Reading		100	46.0	36.4	82.4	+2.1	84.5	17.6	15.5
Southern:									
Atlantic Coast Line–Louisville & Nashville		100	46.6	37.0	83.6	−.1	83.5	16.4	16.5
Southern		100	46.8	33.2	80.0	+2.6	82.6	20.0	17.4
Western:									
Illinois Central–St. Paul		100	47.4	36.6	84.0	+1.8	85.8	16.0	14.2
Southern Pacific		100	47.8	33.4	81.2	+2.4	83.6	18.8	16.4
Atchison		100	45.4	39.2	84.6	+.3	84.9	15.4	15.1
Union Pacific–Northwestern		100	46.9	36.0	82.9	+2.3	85.2	17.1	14.8
Great Northern–Northern Pacific		100	48.7	34.6	83.3	+.1	83.4	16.7	16.6

Oral Presentation, January 12, 1924, by John E. Oldham, Before the Interstate Commerce Commission Re Railroad Consolidations

In beginning my study of the problem of railroad consolidation some years ago I approached the matter chiefly from the standpoint of finance and credit supplemented so far as was possible from the information available to me by a study of traffic relationships. I prepared and published a plan of consolidations before the taking of testimony in this proceeding was begun. At the conclusion of this hearing I testified and put this plan in evidence as Exhibit No. 709. In my testimony I stated that in developing the groupings I had not had the advantage of the valuable information in regard to traffic relationships which had been developed by Professor Ripley and the commission in its tentative plan, nor had I had the advantage of the testimony in these same matters which had been presented at the hearings. Since the hearings I have not had adequate opportunity to study this data, but I have made some examination of the more important parts of the record. There have been also some developments in other ways which would suggest some changes in my original plan. In considering both the original plan and the changes in it which I now suggest I would like to have it borne in mind that my general purpose and my interest in this proceeding is to show that without impracticable disruption of existing financial relationships and without so far as I can see substantially affecting established and existing routes of traffic, it is possible to include the railways of the country within a list of approximately a dozen systems of similar financial magnitude and similar earning power—systems coinciding in a general way with the great traffic territories and thus systems of diversified traffic, thereby simplifying the problem of rate regulation.

It will be apparent that the assignments I make will not be satisfactory to everyone, but if it is remembered that I have approached the subject more largely from the financial point of view than most of the witnesses, and that I am not attempting to weigh the evidence in the record or to argue that better arrangements in individual instances can not be made, I am in hopes that such suggestions as I make will not prove objectionable to any one, but will be looked upon as an attempt to be helpful in a situation which, as a whole, is surrounded with many difficulties. With my original groupings I prepared statistical data which showed that the systems which I proposed in each rate district were strikingly similar in their operating and traffic characteristics; that is to say, the costs of operation were proportionately the same or approximately so in each instance; the proportion of each class of tonnage was very similar; that is the tonnage of each system was made up of similar proportions of products of agriculture, mines, forests, manufactures, etc.; the average rates per ton-mile and per passenger-mile varied but little. These comparisons will be found in detail on pages 44-46 of the Exhibit No. 709, which is a part of the record. Although reliable data covering valuations was not available, I concluded nevertheless that railroads in the same territory which handled very similar traffic must necessarily have similar facilities for handling such traffic, and of approximately the same value, and that inasmuch as the rates and operating costs were substantially uniform it was fair to conclude that such systems would be able to earn substantially the same rate of return on their respective property values and thus meet the requirements called for by the transportation act as defined by section 5, paragraph 4, which reads as follows:

"The several systems shall be so arranged that the cost of transportation as between competitive systems and as related to the values of the properties through which the service is rendered shall be the same so far as is practicable so that these systems can employ uniform rates in the movement of competitive traffic, and, under efficient management, earn substantially the same rate of return upon the value of their respective railway properties."

In the matter of valuation, I might add that much more data is now available than was the case when my original studies were made and that while I have not attempted to compile the figures for the various systems, nevertheless, in the studies which I have recently made of the valuation data relating to important individual roads, I have found reproduction cost plus land values as determined by the commission are approximately the same for similar properties. This has confirmed my opinion that when valuations are completed and made available the conclusion alluded to above will be justified. The statistical comparison which I presented with my original groupings was based upon the earnings and operating statements of the test period, and the traffic statistics were for the year

ended June 30, 1916. I used the figures of the test period in the belief that they were more reliable for comparisons intended to reveal the relative positions of the various roads under normal conditions than were the figures of later periods. I used the traffic figures for the year 1916 inasmuch as such figures were not available for each year in the test period and inasmuch as the year 1916 was close to the average for the test period. The similarity of these systems, as I have developed them, I believe is not a matter of chance or coincidence but is the logical result of planning systems which extend widely throughout the rate district in which they operate. Systsems created in this was necessarily have the diversity of traffic of the whole district; they are subject to both the operating advantages and disadvantages which are found in the various parts of the district. This I found to be the case with the larger systems which were the result of earlier consolidations. I refer to such systems as the New York Central and the Pennsylvania in the eastern district, the Southern Railway, and the combination represented by the Atlantic Coast Line, and Louisville-Nashville systems in the southern district, and the Santa Fe and the so-called Hill group of roads in the western district. This matter is discussed at some length in Exhibit No. 710, which I introduced when I testified November 23. I would call special attention to the statistical comparison contained in this exhibit, of the traffic and operating statistics of the New York Central and Pennsylvania systems, with the combined statistics of all roads in the eastern district.

I desire to place especial emphasis upon the desirability, or perhaps better the necessity, of planning for systems which shall extend widely throughout the rate district in which they are located, in order that such systems may be of average character, because this is the principle in accordance with which average systems have been created heretofore and is the only principle I have been able to discover which is capable of general application.

I have now grouped the principal railways of the country into 11 systems in place of the 13 which I proposed in the above-mentioned pamphlet. Let me indicate in some detail the modifications of my original groupings and the regroupings which I desire at this time to suggest for the consideration of the commission. Reference to the pamphlet entitled "A Plan for Railroad Consolidations," Exhibit 709, which is a part of the record, will show that in the eastern district I had proposed 5 consolidated systems; in the southern district 2, and in the western district 6—a total of 13 for the whole country. I now suggest 4 systems for the eastern district in place of 5, 2 systems for the southern district as heretofore, and 5 systems for the western district in place of 6, a total of 11 for the whole country. I have filed with the commission maps showing the four revised eastern systems; and the five revised western systems, together with statistical data showing the relative mileage, revenues, and operating costs of the systems in each district.

In the eastern district I now eliminate the Norfolk & Western-Chesapeake & Ohio system which I originally proposed. This was the one system in the eastern district which did not comply with the principle of extending widely throughout the rate district in which it was located. For this reason it did not have the diversified and balanced traffic which is desirable; it was principally concerned with the movement of a single commodity—coal. Moreover, testimony in the record indicates that there is a large movement of this coal westward from the Pocohontas field, and that better distribution throughout the Central Western States and into the Northwest may be expected if the so-called coal roads are made parts of several widely extending systems than would be secured if these roads as originally proposed were made into a separate system which of necessity would be more nearly local in extent and character. Furthermore, since my original groupings were made I understand that the Carolina, Clinchfield & Ohio, which was made a part of the system referred to, has been leased to the Louisville & Nashville, and the Chesapeake & Ohio and the Hocking Valley have entered into closer relationships with the Nickel Plate Group. Because of these facts, I now suggest that the different roads in the Pocohontas district, instead of forming a single system, be allocated to one or another of the larger systems. The disposition of the Carolina, Clinchfield & Ohio and the Chesapeake & Ohio and the Hocking Valley has been indicated above; in addition I have allocated the Norfolk & Western to the Pennsylvania system which has long had a substantial interest in it, and the Virginian to the New York Central. Two of the systems which I originally proposed were based respectively upon the New York Central and included its affiliated companies with few additions, the chief of which was the Central Railroad of New Jersey; and upon the Pennsylvania and its affiliated companies. These two systems exemplify the type of systems which

consolidations are intended to create. Each of them extends widely throughout the eastern district and each of them is, therefore, of the average character which the consolidated systems are intended to possess. Reference has already been made to the similarity of these systems to a single system representing the combined or composite characteristics of all roads in the eastern district. The changes which I now suggest in the New York Central system, as originally proposed, are the subtraction of the Lake Erie & Western, which the Central no longer controls, and the addition of the Virginian. In the case of the Pennsylvania, I suggest the addition of the Norfolk & Western.

A third system which I originally proposed was based upon the Erie, the Lackawanna, the Nickel Plate, Pere Marquette, and the Wabash. It included, in general, lines in the eastern district located between the New York Central and the Pennsylvania and was referred to as the Buffalo system. I now revise this system by adding to it the Toledo, St. Louis & Western which has already been consolidated with the Nickel Plate, and the Chesapeake & Ohio and Hocking Valley which have established close relations with the Nickel Plate group; and by taking from it the Wabash which is no longer necessary since the Toledo, St. Louis & Western traverses much the same territory and will prove equally serviceable. Although I originally grouped the Elgin, Joliet & Eastern with this system I have not included it in the revised system, since it is a road of such terminal character that it is closely related to several systems. The fourth system was based upon the Baltimore & Ohio and affiliated companies, the Philadelphia & Reading, and the Lehigh Valley. Geographically it occupies much the same position with relation to the Pennsylvania as the proposed Buffalo system does to the New York Central. I have modified this Baltimore & Ohio-Reading system by adding to it the Wabash lines east of the Mississippi River which have been taken away from the Buffalo system, and by subtracting the Toledo, St. Louis & Western which is already a part of the Nickel Plate group as stated above. The Lehigh Valley and the Wabash, with traffic rights over the Grand Trunk, would give the Baltimore & Ohio system an alternate and northerly route to Chicago, St. Louis and other points in the West. The four systems which I thus propose will all reach the Altantic seaboard, Chicago and St. Louis, the coal fields, both anthracite and bituminous, and southern connecting points. Each system will extend widely throughout the eastern rate district and each system will reach principal markets and shipping points; either the same markets and shipping points or others of equal importance.

In the exhibits introduced as a part of my testimony I showed by statistical tables that the systems which I suggested for the eastern district would handle traffic of various kinds in substantially the same proportion and at approximately the same costs. The modifications of the groupings which I now suggest make no material changes in these respects. The detailed statistics have been before referred to as appearing on pages 44–46, of Exhibit No. 709. Because of the similarity of operating costs net earnings will be similar, and if there is the similarity of property values which I believe to be the case these net earnings will reflect a similar precentage of such values; that is, these systems will be able to earn substantially the same rate of return upon the values of their respective railway properties. With the standardization of the capital structure which will be brought about by consolidation, in accordance with the requirements of the transportation act, their respective incomes will be equally effective to establish and maintain credit. Thus they will be able to provide adequate service to the people of their territories. Systems of these characteristics fully comply with the intent of the transportation act because they will be able to operate with similar results in competition with each other under the uniform rates which are made necessary by the preservation of the competitive principle.

I make no change in the suggestion heretofore made as to the disposition of the New England roads. The record shows that these roads, as a group, are unlike any other group of roads of similar importance. Their dissimilarity is shown in their higher operating costs, in the character of their traffic, and in general in their inability to prosper under rates which are adequate for the roads in the eastern district outside of New England. My views in regard to the New England roads have been presented in full at the hearings in Boston and later in Washington, and I will not take the time to elaborate them at this time. I will merely state that compliance with the principle of providing for average sustems which extend widely throughout the district in which they are grouped for rate making purposes requires that the New England roads become parts of the other systems which I have suggested.

As to the Southeastern section of the country I make no suggestions for any material modification of the groupings I have heretofore proposed, except to add to the Atlantic Coast Line-Louisville & Nashville system the Carolina, Clinchfield & Ohio as noted above. In my revised groupings I have not included the Florida East Coast in any system. With equal propriety it could become a part of either of the proposed systems or it could be jointly controlled by both. As an independent system, it would perhaps best serve the public. As with the New York Central and the Pennsylvania in the eastern district, so with the Atlantic Coast Line-Louisville & Nashville and the Southern systems in the South, they already extend largely throughout the territory and are average systems. The only other road of considerable size in this territory is the Seaboard. As a system by itself it is unsatisfactory, and there are no other roads apart from the Southern and the Atlantic Coast Line with which it could be united so as to form a strong unit. For these reasons, I have grouped it with the Southern for the maintenance of competition with the system which includes the Atlantic Coast Line.

West of the Mississippi River certain changes have also taken place in the general railroad situation since I made my original groupings. The Central Pacific has now been leased to the Southern Pacific. There has thus been established a relationship which has the approval of the commission and which may be looked upon as permanent. This arrangement places the Central Pacific at the service of both the Southern Pacific and the Union Pacific. It suggests that the only other mid-Rocky Mountain group, that is, the Denver & Rio Grande-Western Pacific, should be placed in a similar relationship to the two other systems which reach the Denver gateway. The Atchison System like the Southern Pacific System is a gathering and distributing road in California. By allocating to it the Denver & Rio Grande-Western Pacific it will be afforded a route through the Denver gateway similar to that which the Central Pacific affords to the Southern Pacific. The other system in this territory which I propose, viz: the Burlington System, can serve and be served by a relationship to the Denver & Rio Grande-Western Pacific similar to that which has been assured to the Union Pacific with the Central Pacific. This will be shown by a reference to the maps wherein it appears that geographically the Burlington System is related to the Atchison and the Western Pacific in a manner similar to that of the Union Pacific to the Southern Pacific and the Central Pacific. In this way the four main systems which reach the Denver gateway will be provided with routes through this gateway fitted to their respective needs.

The testimony presented in the record makes it very clear, I think, that any grouping which does not include in one system the Northern Pacific, Great Northern and the Chicago, Burlington & Quincy would result in a serious breaking-up of existing routes and channels of trade and commerce quite inconsistent with the intent and actual provisions of the transportation act. In fact, this danger is recognized and commented upon at length in the tentative report of the commission, especially on page 598 from which the following quotation is taken:

"Breaking up the existing Hill combination and allying the Burlington solely with the Northern Pacific might well deprive the Great Northern of so much business northbound from the Burlington river line from Chicago as to jeopardize its welfare."

And, furthermore, it is probable that the separation of any one of these three roads from the other two would present insuperable financial difficulties. In my new grouping shown by the maps which I have filed, I therefore, place these three roads in one and the same system.

In my original grouping I made a system composed principally of the Illinois Central and the Soo, and I had placed the St. Paul with the Great Northern. I now group the Great Northern with the Northern Pacific and the Burlington, and I place the St. Paul with the Illinois Central in place of the Soo; I have not placed the Soo with any system but have left it as at present a part of the Canadian system which now owns it. In this St. Paul-Illinois Central system I include the St. Louis & San Francisco which I had previously grouped with the St. Paul; and I have added the International & Great Northern and the Gulf coast lines; by these means the system will have access to the various ports on the Gulf. This system is somewhat similar to that proposed by Mr. Holden in his four-group plan, except that the Frisco instead of the Missouri Pacific provides the principal line to the Gulf. It seems to me that this arrangement preserves competition to a greater degree.

Thus I present five systems where I previously had shown six. All these systems reach the Mississippi River gateways, all of them reach the Gulf ports, all of them reach the Pacific coast ports. Two of them reach California by southern routes, four of them by mid-Rocky Mountain routes, and three of them reach Puget Sound by northern routes. As with the proposed systems in the East and in the South these five systems will be the kind of railroad units intended to be created by the transportation act. They will extend widely throughout the western district; they will participate to a large extent in its varied traffic; they will experience the advantages and disadvantages in operation characteristic of the territory; in short, they will be average systems—average in the cost of operation and in net results. With the standardization of financial organization which will be brought about in the process of consolidation, the similar net income will be equally effective in establishing and maintaining credit. These systems, I believe, will thus be able to provide adequate railroad service throughout the territory.

If in these groupings I suggest some alliances which considered solely by themselves may be open to some objection, I point out that no proposed alliance or grouping can be considered solely by itself; but that the problem is to group all of the railroads in such a way that the total results of all groupings will best carry out the purpose of the transportation act. Such groupings doubtless involve some alliances less obviously natural than others. I am confident, however, that the proposed groupings provide a whole plan constructed in accordance with the principles which I believe must be followed in an attempt to create throughout the whole country railroad systems of the desired character and necessary interrelationships. I have not attempted to dispose of all of the small roads but to make groupings which include the principal Class 1 railroads. The roads which I have included in these groupings represent about 93 per cent of the total railroad mileage of the country and together handle about 95 per cent of the transportation business of the country, as indicated by the figures covered by the test period.

Memorandum Submitted to the Interstate Commerce Commission at Washington, November 23, 1923, by John E. Oldham

You have asked me to present to the commission such conclusions as I have reached regarding the subject of railroad consolidations. In order that my conclusions may be the better understood and appraised it has seemed advisable to indicate the considerations which have had weight with me in arriving at them. This I have attempted to do in this memorandum even though thereby I may have stated much which is well known to the commission. A more detailed treatment of many matters herein referred to will be found in two pamphlets I shall offer as exhibits, and any further development of these matters which the commission may desire can be made I think by oral discussion during or following the reading of this memorandum.

The conclusions I have reached as to railroad consolidations are based upon a recognition of the following:

1. That the railroad policy of the United States is that the railroads are to be privately owned and managed, are to be operated on the competitive rather than the monopolistic principle, and are to be under public regulation.

2. That the permanency of this policy is dependent upon the ability of the railroads to furnish adequate service under such rates and other conditions as may be established by the regulatory code.

3. That the ability of the railroads to furnish adequate service is dependent upon the receipt by them of an income sufficient to induce their owners or other investors to furnish them with additional capital as needed.

4. That no system of rate making can be based upon the condition or position of each individual road, but must be based upon the condition and position of the railroads as a whole.

5. That even though the system of rate making must be based upon average rather than individual conditions yet the success and permanency of such a system can be assured only if all railroads subject to it shall be able to attain similar financial and operating results and that obviously such similar results can be attained only if the railroads themselves are similar in character, each approximating the character of the railroads as a whole in the territory which it serves.

6. That Congress, recognizing the necessity of providing adequate income for the railroads, has defined such income as being an amount sufficient for a fair return upon the value of the property used in the service of transportation, and has provided a method of rate making designed to produce in the aggregate a railroad income equal to such fair return upon the aggregate value of such railroad property.

7. That Congress, also recognizing the necessity of providing for railroads of average or uniform character in order that each may obtain a similar income from the system of rate making then provided, inserted the provisions relating to consolidations, the underlying purpose of which is to establish railroad units of such uniform character as is necessary to secure the successful application of the rate-making provisions of the transportation act.

I reach the conclusion, therefore, that the provisions of the transportation act relating to consolidations are primarily the logical result of the method of rate making provided by the act.

The units of the rail transportation system of the country as they exist to-day are not of uniform character. In the pamphlet entitled "A Plan for Railroad Consolidations," herewith offered as an exhibit, I have analyzed this matter of dissimilarity.

My analysis shows—

1. That roads which handle about 85 per cent of the business of the country handle that business at such similar cost that the net results of operation are similar for all of them.

2. That of the roads in this group, roads which handle about 60 per cent of the country's business have been able, in times when rates were recognized to be adequate for railroads as a whole, to pay from their net incomes fixed charges and dividends on all issues of outstanding capital stock and in so doing have average to distribute to their security holders approximately 80 per cent of their net income about equally divided between fixed charges and dividends.

3. That the remaining roads of this 85 per cent group—namely, roads which handle 25 per cent of the country's business—from a similar amount of net earnings have likewise distributed 80 per cent, practically the whole of which has been in the form of fixed charges, leaving no balance for dividends, if the same proportion of net earnings is to be carried to surplus account.

4. That roads where costs of operation are such as to prevent their obtaining a similar amount of net income are roads which handle not over 15 per cent of the country's business.

A study of such valuation data as has been published by the commission clearly indicates that property values are similarly related to both gross and net earnings as shown by the average of both the 60 per cent and the 25 per cent groups. It indicates further that on the basis of reproduction cost plus the value of lands the total capitalization of the 60 per cent group is consistent with this valuation of property, but that in the case of the 25 per cent group total capitalization exceeds property valuation.

The roads of this 25 per cent group are generally considered to be weak roads. I point out, however, that as a class their weakness is accounted for solely by their faulty capitalization and is not occasioned by disadvantage of location or operating conditions. Of course, it is understood that there are certain variations as between individual roads in each group and that these comparisons are between the groups as such. I do not hesitate to say that if roads of the 60 per cent group were capitalized as are the roads of the 25 per cent group they would be classified as weak roads, and conversely, roads of the 25 per cent group capitalized as are the strong roads would be called strong.

I conclude, therefore, that rates which produce fair return upon property value will maintain the credit of the 60 per cent group of roads and will thus enable them to furnish adequate service, while the same rates though producing a similar income and a similar rate of return upon property value for roads in the 25 per cent group will not establish their credit and thus will not enable them to furnish adequate service. I conclude further that one of the major problems to be solved in the process of consolidation is to bring about such capital reorganizations as shall make capitalization consistent with property value. A second major problem is the distribution among the stronger systems of the 15 per cent group of roads which are unable to derive from rates adequate for roads as a whole an income which will enable them to furnish adequate service.

So long as the units of our transportation system are so greatly lacking in uniformity, as is indicated by the above, it is obvious that uniform results can not be attained under the transportation act, or in fact under any system of regulation which can be devised. Unless railroad units of more uniform character can be

created through the process of consolidation any system of public regulation will fail, and where public regulation fails the continuation of private ownership will become impossible.

The transportation act specifically provides that in planning for these new railroad systems existing routes and channels of trade and commerce should be preserved where practicable and competition shall be maintained as fully as possible. My conclusion is that this first condition is a requirement that existing systems, whether they exist as a result of mergers, leases, stock controls, or other forms of ownership, are to be dismembered only sparingly, since if such existing systems were to be allocated in part to one new system and in part to another, a considerable change in traffic movements would be inevitable.

The subject of competition requires a somewhat more extended discussion in as much as the conception of the meaning of the act relating to it has an important bearing upon the character of the grouping of roads to be adopted.

Since the fundamental purpose of the transportation act is to provide transportation at the lowest costs consistent with adequate service it is clear that the competitive service which is to be preserved is such as will promote economy of operation and efficiency of service. The mandate to preserve competitive service, therefore, is also a mandate to eliminate any and all competitive service which through a duplication of facilities, or otherwise, will tend to increase the cost of service or hinder its efficiency.

It is not only unnecessary to make any attempt to preserve wasteful competition; the possibility of eliminating any wasteful competition becomes an argument in favor of any proposed consolidation. It seems to me to be unsound to hold as it has been held in some cases in the tentative plan published by the commission that some consolidations which might be made with advantage to the public from the point of view of economy and efficiency can not be considered because such consolidations would require the merging of roads which are parallel to each other and because such consolidations would violate the provisions of the act relating to the preservation of competition. As I interpret the transportation act the preservation of competitive service is made subordinate to its more fundamental and important requirement for adequate service at a minimum cost. But even if consolidations are planned for in accordance with the principle just stated, I am convinced that the competitive factor will still be present to protect the public interest. The policy of rate making established by the transportation act is that rates are to be made with a view to the combined requirements of groups of roads and without regard to the particular requirements of any single road in the group; the total product of the rates is designed to be neither more nor less than the amount which will satisfy the combined requirements of all. The consolidation process is intended to create in a given territory a few railroad systems so organized and so circumstanced that all will have equal opportunity to secure from this rate fund, which as a whole is designed to be sufficient for all, the income which each needs. Under such circumstances it is obvious that each system will be in the keenest kind of competition with all other systems in the rate group, in competition to secure it needed income from a total rate fund which is adequate for all but which is, nevertheless, limited in amount. The success of any railroad in this competitive struggle will depend solely upon the quality of the service which it offers and upon its ability to practice economical and efficient operation and management in providing such service. Competition of this kind will furnish the incentive for each system to supply the best possible service for failure to do so will deprive it of income upon which its financial success depends. Thus it seems clear to me that the benefits to the public resulting from the competitive struggle of the new consolidated systems may be expected to be greater than it has heretofore received from the competitive service which has existed.

I therefore conclude that the mandate to preserve competition is not a mandate to preserve any wasteful competition but rather to eliminate it; that the struggle of railroad systems of equal possibilities to secure each its needed income through the practice of economy and efficiency is the competition which is to be made possible, a competition which will afford a maximum of advantage to the public. The sole object of the policy of competitive service as distinguished from monopolistic service is to assure such advantage to the public.

The foregoing is a statement of the principles which must be observed if private ownership under public regulation is to be successful and an analysis intended to show that these principles can not be observed and applied to our transportation system as it exists to-day. Furthermore, it is an attempt to indicate the character of railroad systems to which these principles may be applied with success.

To summarize these, the problem of consolidation, as I understand it, is to group all of the existing railroads of each major section of the country into a few systems of such uniform character that they can compete on equal terms and be equally successful in obtaining a return upon their respective property value and so similar capitalized in accordance with sound and proven standards that the similar return upon property value will be equally effective to assure credit; and, furthermore, that this grouping is to be accomplished so as to preserve, so far as possible, not only such traffic relationships as have been created by a common ownership of properties but also such as have existed between properties of diverse ownership.

The groupings I have suggested in the pamphlet entitled "A Plan for Railroad Consolidations" which was published by the Investment Bankers Association of America in November, 1921, which pamphlet has already been offered as an exhibit, were made in conformity with the principles outlined above. The statistical data contained in the pamphlet shows that the proposed systems in each of the major sections of the country are substantially alike in the character of their business, in the cost of handling it, and consequently in the net results derived therefrom. Such systems, after the completion of such capital readjustments as would be made in the process of consolidation to meet the requirements of the transportation act, would of necessity be substantially alike in their financial characteristics.

That all systems in each of the major sections of the country would be competitors of each other is sufficiently indicated by the maps which show their territorial extent and their locations with relation to each other; that competitive service would be available for a large proportion of the larger communities of the country is shown by tables appearing on pages 48 and 49. For instance, in eastern territory lying between the Hudson and Mississippi Rivers and north of the Ohio, 40 out of the 44 cities having a population of 75,000 or more would be served by at least two systems, 11 would be served by three systems, and 14 by four. As to the systems themselves, one would reach 31 of these cities, another 26, another 34, and the other 28. And similarly in other parts of the country.

These groupings were made in 1921 before the publication of the large amount of valuable traffic data contained in the tentative plan of the commission, and without the advantage of the additional facts since presented to the commission by the officers of the various companies, and by others most familiar with traffic movements of the different existing systems.

It is quite clear in the light of this fuller information that some modifications in the details of the groupings should be made. It is equally clear, I think, that in making such modifications as will the better take into account existing traffic relations there need be no departure from the general method of procedure which I have adopted. Even with such modifications of detail, systems can be made which will be no less uniform in character.

In order that there may be a better appreciation of the similarity between the different systems I have proposed, and of the equality of the results which they may be expected to attain, as well as an understanding of the reasons for this similarity, I refer to a pamphlet entitled "The Problem of Railroad Consolidations." This is a reprint of an article prepared by me and published in the Harvard Business Review for January, 1923, and I offer it as an exhibit. Here I have shown in terms of operating and financial statistics the composite character of all existing railroads located between the Hudson and Mississippi Rivers and north of the Ohio River and the lines of the Norfolk & Western Railroad. I have shown by similar statistics that the New York Central system and the Pennsylvania system, combined or singly, are very similar to the composite whole, in the character and cost of business handled, in the rates under which they operate, and in the net results obtained. I have shown also that the combined statistics of the remaining roads in this territory are like the composite whole or like the New York Central and the Pennsylvania combined or singly. The New York Central and the Pennsylvania handle slightly more than 50 per cent of the tonnage of the territory. This suggested that the problem was to construct out of these remaining roads, two additional systems which shall exhibit the characteristics of those already in existence and which are not to be dismembered. The statistical data shows the possibility of constructing two such systems.

The similarity of the four systems thus exhibited is not a matter of chance or a mere coincidence. It is the result of adherence to the principle that to make systems which reflect the average characteristics of the territory which they serve it is necessary to provide that such systems must to a large extent reach into and

serve the same or similar traffic centers, thus sharing to a similar extent in the varied traffic of the territory and furnishing service under both favorable and unfavorable conditions.

The fact that the two principal systems in southern territory are similar to each other is no matter of chance, but is due to the fact that they are groupings which have been developed in accordance with this principle.

As for the situation west of the Mississippi River, I have followed the same principle, and the groupings I have made exhibit a similarity to each other comparable to the similarity of the groupings in the East and in the South. It is to be said, however, that owing to the larger extent of territory and the greater number of roads involved a greater variety of groupings is possible than in the East or South even with full adherence to the same principle. The developments of the past two years, together with testimony adduced as to traffic relations of the roads west of the Mississippi, lead me to believe that a somewhat different grouping than that which I have proposed could be made which would offer greater assurance that existing traffic routes would be preserved and would create systems no less similar to each other in essential respects.

It is clear, I think, that to provide for systems which shall be similar to each other in each district of the country it is necessary to provide for systems, each one of which shall be similar to the composite of all railroads in the district; that is, that each system shall be an average system. The surest and, I think, the only dependable way of securing this result is to plan for systems each one of which shall extend widely through its rate district. Under such circumstances all systems will share in the varied traffic of the territory and experience its varied operating conditions.

By this method and by this method alone can we expect to develop a national system of transportation composed of units—

"so arranged that the cost of transportation, as between competitive systems, and as relating to the values of the properties through which the service is rendered, shall be the same, so far as practicable, so that these systems can employ uniform rates in the movement of competitive traffic, and, under efficient management earn substantially the same rate of return from the value of their respective railway properties."

The orderly and systematic development of railroad units of this kind is a development along the clearly defined lines which experience has shown to be of advantage both to the railroads and the public, for they are examples of the kind of systems which were being formed before the law made further consolidations impossible.

The practicability of actually accomplishing such consolidations as are provided for by the act has frequently been questioned in the belief that there is involved an assumption of burden by the strong roads. In referring to this aspect of the problem a special committee of the Chamber of Commerce of the United States appointed to study questions relating to consolidations in its recent report uses the following language:

"It needs no argument to prove that a railroad property with capitalization and fix charges out of proportion to its earnings has no greater value to offer upon entering a consolidation than has another railroad with similar net earnings and physical value but with a conservative capitalization and with capital charges that are readily met from net earnings. However, wide differences in the capitalization of two railroads dos not prevent their being consolidated upon the basis of their actual values.

"If the factors of net earnings and physical values are taken to determine the values of consolidated railroads, and due consideration is also given to such special circumstances as may obtain in exceptional cases, consolidation can be effected in such a manner as to protect the equitable interests of all the roads and to avoid imposing burdens upon any of them."

This clear and concise statement seems to me to be all that is necessary to dispose of the fears as to the impracticability of consolidations because of alleged burdens to strong roads.

Apprehension has been expressed that systems of such size as those proposed would be too unwieldy for effective management. Here again I quote the conclusions of another special committee of the Chamber of Commerce of the United States, appointed to study this very phase of the matter—conclusions which were reached after full consideration of the problem.

"The experience in American industry has demonstrated that there are no conditions inherent in large organizations which make it impracticable for them to attain standards of efficiency of which small units are capable. On the contrary, there appear to be a number of advantages which are held by the large units.

"Some of the larger existing railway systems would fairly represent the type of organization which would result from the contemplated consolidations. They have found it feasible to give good service to widely scattered territory of diverse interests and have established methods of administration by which they effectively surmount the difficulties of large scale operation. Their experience and practice would be available for the guidance of new large systems."

I regard this as evidence from an authoritative source that consolidations which are desirable from other points of view need not be avoided because of any dangers to effective management occasioned by their size.

A question has also been raised as to the meaning of the term "consolidation" as used in the act. If the commission shall conclude that its plan of consolidation must be restricted to groupings accomplished through the actual merger of properties, and that it is not free to make use of leases, stock controls, or other devices of ownership, then it is apparent that many groupings which would be desirable from every point of view would be prevented, and that the full purpose of the act would fail of accomplishment. The purpose of the groupings as I understand it, is to create systems of equal earning power in order that the owners of the securities of each property may secure the return to which they are entitled. It seems to me, therefore, that it is not material from this point of view whether ownership is evidenced by securities of a parent or of a subsidiary corporation. Where the purpose of the act is so clear it may be hoped that a way will be found to accomplish it even though there may be some doubt as to whether the act has in terms prescribed all forms of ownership which it may be desirable to employ.

This memorandum is an attempt to indicate the more important purposes intended to be accomplished by consolidations, and to set forth the principles which I am convinced should govern the formation of the new railroad systems. I present it in the hope that it may be of some assistance to the commission.

A PLAN FOR RAILROAD CONSOLIDATIONS, INCLUDING A DISCUSSION OF THEIR PURPOSE AMD PRACTICABILITY

By JOHN E. OLDHAM

PREFACE

Since the railroads of the country were returned to private management on March 1, 1920, the attention of railroad executives, the shipping public, and citizens in general so far as it has concerned itself with railroad problems, has been directed to questions of immediate importance. Transportation rates, labor costs, and obligations due to or from the Government have been the problems of immediate concern.

The transportation act of 1920, properly called one of the great constructive pieces of legislation of our national existence, makes provision for the consolidation of the railroads of the country into a limited number of systems in accordance with such plans as may be adopted or approved by the Interstate Commerce Commission. Little public attention has as yet been given to this matter, and yet it is fundamental to any final solution of the railroad problem, since the financial soundness and credit position of the railroads of the country are dependent upon the character of such consolidations.

It is not an overstatement to say that consolidations have an important bearing upon the future success of private operation and ownership, and hence a close relationship to the question of public operation and Government ownership. It is inevitable that this whole matter of railroad consolidation will soon come into general public discussion and will receive the attention which its fundamental importance deserves.

The writer of this pamphlet, Mr. John E. Oldham, of the firm of Merrill, Oldham & Co., Boston, a former vice-president of the Investment Bankers Association, and chairman of its railroad securities committee, in February, 1920, prepared an article entitled "A comprehensive plan for railroad consolidation," which first appeared in The Nation's Business. Later this article, amplified with supplementary tables and maps, was published in pamphlet form by the Chamber of Commerce of the United States.

The present pamphlet is a further study of the same subject and presents a more carefully determined conclusion. The investment Bankers Association has undertaken its publication and presents it to the public with the hope that its analyses and findings may constitute a contribution of value in bringing about such railroad consolidations as may be desirable and necessary to carry out the purposes of the transportation act.

NOVEMBER, 1921.

INTRODUCTION

At the time the railroads passed under Federal control in December, 1917, transportation facilities were inadequate for the needs of the country, and railroad service generally was unsatisfactory. Facilities were overcrowded, terminals especially were congested. Embargoes on freight and priority orders became necessary to assure the movement of the most essential traffic.

While the sudden change from a nation at peace to a nation at war brought about new and unexpected conditions and made unusual demands upon the transportation facilities of the country, it nevertheless had become evident long before our entrance into the war that these facilities were fast becoming unequal to the needs of the country, especially because of the inability of the railroads generally to raise new capital. Railroad credit had become so depreciated that investors had lost confidence in the securities of even the strongest systems. Many of the weaker systems were having serious financial difficulties, and not a few were in receivership. Many persons believed that private management was a failure and that Government ownership would be necessary to give the country adequate and satisfactory service. Others contended that the unsatisfactory financial condition of the railroads was due to the restrictions of public regulation, and that under a more liberal policy the roads could be operated successfully under private management. Agreement was general, however, that the roads should not be returned by the Government to their owners without the enactment of legislation which would make substantial changes in the policy of regulation theretofore in force, and especially legislation made with a view to rehabilitating and maintaining credit on a permanently sound basis.

The roads were returned to their owners March 1, 1920, and the success of private management under the legislation provided by the transportation act is yet to be determined.

It need hardly be stated that private management can not continue unless it succeeds in furnishing the country with a system of transportation adequate to its needs at all times, and that the failure of private management will necessitate Government ownership and operation.

As sound credit is essential to adequate facilities and satisfactory service, the restoration and maintenance of credit are necessarily essential to assure the continuance of private management and to avoid the possibility of Government ownership. In order that credit may be restored and transportation conducted successfully under existing laws, the transportation act recognizes that further consolidations among the railroads of the country may be necessary, and provides a method by which they may be accomplished.

The relationship of consolidations to credit and the practicability of making consolidations necessary to establish credit form the subject of this pamphlet.

Part I analyzes the causes of the depreciated credit of the railroads in the decade prior to their being taken over by the Government and contains a discussion of consolidations as a factor in restoring and maintaining sound credit conditions.

Part II presents a concrete plan for consolidating the principal railroads of the country into a limited number of systems. This plan has been prepared because of the conclusions arrived at in Part I that consolidations are important and necessary for the purpose stated. Accompanying the plan are maps and statistical data to show that the proposed systems would be strong, self-supporting, and competing in accordance with the requirements of the transportation act.

PART I. CONDITION OF RAILROAD CREDIT BEFORE FEDERAL CONTROL

In the discussion of the railroad problem, the roads with satisfactory dividend records have usually been referred to as "strong" and those without such records as "weak." Using this classification, it will be found that during the 10 years preceding Federal control approximately 60 per cent of the traffic of the country was handled by the so-called strong roads and the remaining 40 per cent by the so-called weak roads.

THE STRONG ROADS

Prior to 1910 railroad earnings generally were adequate to furnish the strong roads with income which covered not only their dividend requirements but provided also a margin, or surplus, sufficient to offset such shrinkage in earnings as might result from a temporary change in business conditions or from other causes which could not be foreseen. Under these circumstances the strong roads found it possible to finance a considerable part of their requirements by the issue of capital stock, thus following a policy which is universally recognized as a test of sound credit.

After 1910, although the same rates of dividend were generally maintained, the margin of earnings which had previously served to protect dividends had become so reduced, with the exception of a brief period covered by the years 1916 and 1917, that investors lost confidence in the ability of these roads to continue dividend payments at former rates. As further issues of capital stock were impossible under these conditions, financial requirements were necessarily met largely by the issue of bonds.

That the reduced margin of earnings was the result of increased cost of operation and the impossibility of securing rate increases necessary to offset the increased cost is shown conclusively by a comparison of the reports of the Interstate Commerce Commission for the years covering the period 1910 to 1915. These statements show that in no one of the years 1911 to 1915, inclusive, were railroad net earnings as large as those of the year 1910, although in each of these years gross earnings were larger and property investment was greater. It is fair to conclude, therefore, that the depreciated credit of the strong roads, which is indicated in part by the discontinuance of stock financing, was largely if not entirely due to inadequate rates.

THE WEAK ROADS

In considering the causes of the depreciated credit of the weak roads, which handled the remaining 40 per cent of the traffic of the country, in addition to inadequate rates other conditions must be taken into account. In this discussion the weak roads will be considered in three groups, as follows:

First. The larger systems which in the pre-war period handled about 25 per cent of the country's traffic.

Second. The smaller, or short-line roads, scattered throughout the country which handled approximately 10 per cent.

Third. The New England roads which handled the remaining 5 per cent.

LARGER WEAK ROADS

Because the first group of weak roads—the larger systems—forms a large part of the country's transportation system, and also because the roads comprising this group are and must continue to be a factor of great importance in any proposed plan of consolidation, it is desirable to ascertain and clearly establish the fundamental causes of their weakness. These causes are clearly brought out by a comparison of these roads with the strong roads.

COMPARISON OF STRONG AND LARGER WEAK ROADS

For this purpose tables are here submitted presenting a comparison of the operating and financial statistics of the 10 largest strong roads with a like number of the largest weak roads, all of which operate in the southern and western districts.

The "strong," or dividend-paying roads, will be referred to in this comparison as the Group A roads, and the "weak," or nondividend-paying roads, as the Group B roads. The tonnage statistics in the following tables cover the year ended June 30, 1916; all other statements are based upon figures representing an annual average covering the three-year period ended June 30, 1917, commonly known as the test period.

These tables are designed to show:

Table I. The proportion of gross operating income obtained from different kinds of traffic.

Table II. The percentage of different commodities constituting the freight tonnage.

Table III. The uniformity of rates for both passenger and freight service.

Table IV. The uniformity of operating results, and the disposition of traffic earnings.

Table V. The percentage of fixed charges and dividends to gross operating income.

Table VI. The percentage to gross operating income of: Total capitalization; securities on fixed charges were paid, including interest and rentals; preferred and common stocks.

Table VII. The percentage of net operating income to gross operating income; the rate of return earned on the total capitalization; the similarity of the return of the Group A and Group B roads if similarly capitalized.

TABLE I.—*Per cent of gross operating income obtained from different kinds of traffic*

	Freight	Passenger	Miscellaneous	Total
Group A	68.5	21.7	9.8	100
Group B	72.1	20.5	7.4	100

TABLE II.—*Classification of tonnage*

Products of	Per cent to total tonnage							
	Agriculture	Animals	Mines	Forests	Manufactures	Miscellaneous	Less than carload goods	Total
Group A	19.2	3.8	42.9	13.7	13.9	1.6	4.9	100
Group B	17.2	4.1	40.9	13.2	18.2	2.2	4.2	100

TABLE III.—*Rates*

	Rate per ton mile	Rate per passenger mile
Group A	$0.00812	$0.02060
Group B	.00819	.02060

TABLE IV.—*Disposition of gross operating income*

	Received from passenger, freight, and miscellaneous traffic	Operating expenses and taxes, excluding maintenance	Available for expenditure upon property (maintenance and surplus combined)	Aggregate of fixed charges and dividends
	Per cent	*Per cent*	*Per cent*	*Per cent*
Group A	100	41.1	35.7	23.2
Group B	100	43.6	33.8	22.6

TABLE V.—*Per cent of gross operating income distributed to security holders*

	Per cent of gross paid as fixed charges, interest, and rentals	Per cent of gross paid as dividends on preferred and common stock	Total same as last column in Table IV
	Per cent	*Per cent*	*Per cent*
Group A	11.5	11.7	23.2
Group B	22.2	.4	22.6

TABLE VI.—*Capitalization for each $1 of gross operating income*

	Obligations—Rentals and interest capitalized at 5 per cent	Preferred stock	Common stock	Total [1]
Group A	$2.31	$0.22	$1.54	$4.07
Group B	4.44	1.14	1.45	7.03

[1] As railroad income is derived not only from traffic but also from outside investments, and as the proportion of income from the several sources varies with individual companies, for the sake of uniformity in the above comparisons the proportionate part of the capitalization which may be properly considered as representing railroad property has been determined by placing the same proportion of capitalization against the railroad property that the net railway operating income is to the total net income. For example, if the total net income is made up of 90 per cent of railroad earnings and 10 per cent of earnings from outside investments, 90 per cent of the total capitalization is allocated to railroad property and 10 per cent to outside investments.

TABLE VII.—*Rate of return on capitalization*

	Net operating income (per cent to gross) [1]	Capitalization per $1 of gross operating income (see Table VI)	Rate of return earned on capitalization	Both groups capitalized $4.07—Rate of return earned	Both groups capitalized $7.03—Rate of return earned
	Per cent		*Per cent*	*Per cent*	*Per cent*
Group A	30.7	$4.07	7.54	7.54	4.37
Group B	28.2	7.03	4.01	6.93	4.01

[1] As net earnings are affected by the amounts charged to maintenance, and as there is no uniformity among railroads in the matter of maintenance accounting, it has seemed desirable for the purpose of comparison to charge to operating expenses the same percentage of gross operating income in both groups of roads. The figure used in this case is 28.2 per cent, which is the actual average of the roads comprising Group A.

The conclusions which are to be drawn from these tables are:

First. That the strong and weak roads handle similar traffic; that the proportion of income which is obtained from different classes of service—passenger, freight, and miscellaneous—to the total are about the same; that passenger and freight traffic are handled at substantially uniform rates; and that the revenues received from traffic are expended by both groups of roads in similar proportions for operating expenses, maintenance charges, and disbursements to security holders. (Tables I to IV.)

Second. That Group A roads divide their disbursements to security holders about equally between fixed charges and dividends, while Group B roads disburse about the same proportion of gross, but substantially all of it is absorbed by fixed charges; consequently, the Group B roads can not be expected to pay dividends on their capital stock unless they receive a larger income than the Group A roads for handling similar traffic, or unless they are operated with greater efficiency. (Table V.)

Third. That capitalization representing the aggregate par value of all obligations and stock of the Group A roads is $4.07 per dollar of gross operating income and that of the Group B roads is $7.03; the capitalization of the Group B roads is thus 75 per cent greater than that of the Group A roads; further, that the amount of securities on which interest and rentals alone are paid by the Group B roads is larger than the total capitalization of the Group A roads. (Table VI.)

Fourth. That were both groups of roads capitalized on the basis of their gross earnings, there would be but little difference in the rate of return earned on the capitalization of either group. (Table VII.)

These figures tell their own story. They offer little if any evidence that the average road of either group had any special advantage over the other in location, character of traffic carried, operating costs, maintenance charges, or in

any other essential operating factor. They show also that the necessary readjustment of the capitalization of the Group B roads is all that is required to make their financial showing similar to that of the Group A roads.

The figures given in the tables for Groups A and B are averages. It is a fact that figures for individual roads in each group vary from the average; such variation, however, is no greater in Group B than in Group A. This indicates that at least some of the Group A roads, if capitalized as are the Group B roads, would be considered "weak" roads, and that some of the Group B roads, if capitalized as are the Group A roads, would be considered "strong." In other words, a conclusion as to the relative strength or weakness would be the same whether comparisons are made between the two groups as such or between the individual roads in such groups.

Similar comparisons in the eastern district show similar conditions.

CAPITALIZATION MAKES THEM STRONG OR WEAK

Thus it is evident that the difference between the financial condition of the strong roads and the weak, insofar as the larger systems here under consideration are concerned, is accounted for by the form of their financial structures and has little or nothing to do with the character or quantity of, or the method of handling, their business. This is an important fact, for it indicates that by making over the financial organizations of these weak roads, and by this action alone, the financial condition of roads which carry about 25 per cent of the country's traffic can be placed on a basis of financial soundness similar to that of the so-called strong roads. While these conditions are not generally appreciated, yet the causes which have led to them are quite apparent. The principal railroad systems of the country, the so-called strong roads and the larger systems among the so-called weak roads which together carry about 85 per cent of the country's business, are the result of consolidations of separately built railroads. These consolidations took place, substantially without public regulation, previous to the year 1903, at which time the decision of the United States Supreme Court in the Northern Securities case became an important factor in checking development along these lines. By the consolidations which at that time had been made, roads of favorable situation and conditions had been united with other roads less favorably circumstanced. In this way uneven conditions had been averaged, more or less unconsciously it is true, so that in all essential operating respects the resulting systems in both the "strong" and the "weak" groups were similar. This is clearly shown by the foregoing tables.

NO UNIFORM FINANCIAL POLICY

In this development, however, no uniform financial policy was followed, and consequently no uniformity of capitalization resulted. In some cases the value of the consolidated property equalled or even exceeded the total capitalization; in other cases the capitalization exceeded the property value. Likewise, there was wide variation in the proportion of capitalization which was represented by obligations and by capital stock. The roads where capitalizations did not exceed property values and where fixed charges did not absorb so much of the income as to leave an amount insufficient to pay and to protect dividends, came to be known as the "strong" roads, the roads of sound credit which found it possible under adequate rates to finance by the issue of capital stock. On the other hand, the roads where capitalization exceeded property values and where fixed charges absorbed so large a part of their income that no balance was available for dividends came to be known as the "weak" roads, the roads of unsound credit which even under adequate rates were obliged to finance almost entirely by borrowed capital.

FINANCIAL RECONSTRUCTION NECESSARY

From the foregoing it appears that by reorganizing the financial structures of the roads which comprise the first group of weak roads which carry 25 per cent of the business of the country, both they and the strong roads, which carry 60 per cent of the business, may be expected to operate with similar success under rates which are uniform for all roads in the same rate-making territory.

THE SMALL ROADS

There remains for consideration the balance of the weak roads—the small roads widely scattered over the country—which handle in the aggregate approximately 10 per cent, and the New England roads which handle about 5 per cent of the country's business.

These small roads have been characterized frequently as "less favorably situated." Such characterization is in the main accurate. Some of them probably suffer from the form of their financial organization as do the so-called "weak" roads which have just been described, and like them, they would be benefited by a change in their financial structures. But, the smaller roads generally are further handicapped by the character and quantity of business available for them, by higher operating costs, and by other factors which make it clear that as separately owned and operated units they can not become profitable under any rate-making system which would suffice for the larger and stronger roads competing with them in their respective territories. For the most part, they perform a necessary service; they are important lines as feeders for the larger systems with which they connect; their public very properly demands their continuance; they can not be abandoned.

THE NEW ENGLAND ROADS

With the New England roads the situation is in some respects similar. Like the small roads they must operate under rates made for roads more favorably situated, since their rates are and must be the same in large part as those made for all roads in the eastern territory, even though statistics show that they are more costly to operate. It must not be concluded, however, that these roads constitute a problem by themselves without interest to people outside of New England and unrelated to the railroad problem of the whole country. New England with her enormous factory development is an important market for the raw materials produced by other sections of the country—coal, steel, cotton, wool, copper, and leather—as well as the source from which the country receives many kinds and large amounts of manufactured products which are its necessities and comforts. Thd food producing sections of the country also find a large market for their products in the dense population of the New England district.

The extent of the commercial value of New England to other sections of the country and of their dependence upon her is shown by the fact that nearly 65 per cent of the freight tonnage of the New England roads is interchanged with railroads outside of New England. This high percentage of interchanged business taken with the fact that the haul on the New England roads is short shows very clearly that the latter are to a large extent terminals for their connecting roads and are important parts of these systems.

That the credit of the New England roads be restored and maintained so that they can perform adequately the service required is thus a matter of concern not only to the public of New England, but to the country at large. It is obvious, however, that due to high operating costs their credit can not be maintained under rates which are sufficient for the more favorable situated roads with which they connect.

NECESSITY OF CREDIT RESTORATION

A satisfactory solution of the problem of credit involves: rates adequate to insure a credit position for all roads; such readjustment of capitalization as may be necessary to give each road a sound financial structure; and some provision to overcome the handicaps of location.

Large amounts of new capital will be required by all roads, not only for the adequate maintenance and expansion of their facilities, but also for the liquidation of vast amounts due to the Government as a result of Federal control.

These enormous debts due the Government at the present time are a menace to private operation; their continuance will eventually lead to Government ownership. The conclusion is inevitable, if private management is to be perpetuated, that the railroads of the country individually and as a whole must secure for themselves a credit position which will enable them to meet their capital requirements from the investment markets and without dependence upon the Public Treasury.

THE BASIS OF RATES

From the above it is evident that the factor common to all the railroads is the matter of rates—their adequacy, and the theory upon which they are to be established so as to afford each railroad system a sufficient income. The importance of this factor is clearly recognized by the transportation act.

The provisions of the transportation act relating to rates recognize that the cost of capital is part of the cost of service, and as such must be protected by the rates charged. The act provides accordingly that rates shall be so established as to provide a return on the aggregate value of all railway property held for and used in the service of transportation. It stipulates that for two years, beginning March 1, 1920, such fair return shall be 5½ per cent and, in the discretion of the Interstate Commerce Commission, may be increased to 6 per cent; and that after the expiration of two years the rate of return shall be left to the judgment of the commission, who shall give "due consideration, among other things, to the transportation needs of the country and the necessity * * * of enlarging such facilities in order to provide the people of the United States with adequate transportation."

This recognition by the transportation act of the cost of capital as a factor in the cost of service is not the recognition of a new principle in its application to publicly regulated corporations. The decisions of our highest courts time and again have held that property used in the public service is entitled to a fair and just return—which, obviously, must be provided by the rates charged—and less than such return results in confiscation of property that is abhorrent to the safeguards of the Federal Constitution.

THE SERVICE-AT-COST PRINCIPLE

Various plans which have come to be known as "service-at-cost" plans, in which cost of capital has been given equal consideration with other factors, have been adopted successfully for determining the rates to be charged by public utility companies, especially those furnishing local transportation service. In such cases an agreement has been reached both as to the value of the property to be used for rate-making purposes as well as to the rate constituting a fair return. Heretofore, however, it has been impossible to make railroad rates on this basis, for opinions have differed in regard to the rate constituting a fair return and to the factors which should determine value for rate-making purposes. Progress in this direction has been made, however, in recent years.

The transportation act has fixed the rate of return, or provided the basis for determining the rate of return, which the railroads will be allowed to earn on their property value in the future. Furthermore, in response to act of Congress passed in 1913, the Interstate Commerce Commission has been engaged in preparing a valuation for each railroad of the country, and these valuations are nearly completed. Now for the first time, with more accurate and definite knowledge of these two essential factors, it is possible to apply to the railroads of the country the service-at-cost principle of rate-making and to include in the cost the factor of fair return upon the value of railroad property. In the application of this method of rate making the public in the territory served is charged rates to provide income sufficient to cover the cost of all services performed, including an amount equal to the agreed return upon the aggregate value of the property used in the service.

Provided there is a common interest in the results of operation through a common interest in the ownership of all parts of the property used in the service, it is not essential that the income from each service performed should be proportionate to its cost, nor that each individual part of the property should be self-sustaining so long as the total income received from all services is adequate for a fair return on the aggregate value of the property.

APPLICATION OF "SERVICE-AT-COST" PRINCIPLE—DIFFICULTIES IN ITS APPLICATION TO COMPETING COMPANIES

In the case of public utility companies this method of rate making has been applied to companies having a monopoly and, hence, a common interest in the results obtained. In its application to the railroads, however, the companies, because of diversity of ownership of the constituent parts of the property, have

no common interest in the results of operation, and furthermore competing for the same business are obliged to operate under uniform rates. As in the case of a monopoly, however, the rates can not be made to produce income in excess of the combined requirements of the roads as a whole in any given territory which may be determined to be a unit for rate-making purposes. While rates must be established which will afford the required fair return upon the aggregate value of all the railroad property in a given rate-making territory—and neither more nor less than such fair return—it does not follow that under competitive conditions such fair return will be received by each road in the territory.

If the rates were established at a figure just sufficient to give a fair return to the railroad most favorably situated, such rate would be insufficient to give a fair return to another competing railroad in the same territory less favorably situated. Thus, the second railroad under such a rate would be selling its service at less than cost and, under such conditions, could never arrive at a position of sound credit. On the other hand, if the rates were made at a figure to cover the cost of service of the inferior railroad, the railroad of superior position would receive more than the fair return contemplated by the statute.

Since property values and operating costs of each road are factors which determine the rates to be used for all roads, they should also determine the amount of income to be received by each road. While a separate rate for each road can not be established, this impossibility should not operate to give to any road a return larger than would be received if the rates were established for it as a separate unit; nor should it operate to deprive any road of the full amount of income to which it is entitled on the basis of its individual requirements.

The transportation act recognized these difficulties but found no adequate way to meet them. By providing for the "recapture of excess earnings" it attempts to limit the income of the more favorably situated roads to the fair return on the value of their property; by requiring the Interstate Commerce Commission, in determining the equitable division of joint rates, to give weight to the circumstances of each road and especially to take into account "the amount of revenue necessary to pay operating expenses, taxes, and to give a fair return on the value of the property" it attempts to some extent to divert earnings from the more favorably situated to the less favorably situated roads.

REQUISITES FOR ITS SUCCESSFUL APPLICATION TO COMPETING COMPANIES

Unless some practical way is found to give to each system income adequate for its needs, some roads which are important parts of the Nation's transportation system can not be made financially sound, and the provision for rate making under the transportation act will not fully accomplish its purpose. To apply the service-at-cost method with complete success it will be necessary either (a) to consolidate all the railroads in each rate-making territory into one system, thus creating a monopoly and completely eliminating competition; or (b) to provide a method which is practicable and economically sound for equalizing the income of the various roads by a redistribution of the earnings so that each road will receive from the whole such amount as is necessary for its cost of operation and a fair return upon the value of its property; or (c) to combine the more favorably and less favorably situated roads in each rate-making district so that the systems resulting from the combinations will be able to obtain uniform results under uniform rates.

MONOPOLY NOT TO BE CONSIDERED

The solution of the problem by creating a monopoly should be considered only after failure to meet the situation by one of the other methods. A railroad monopoly in any district would eliminate competition, would offend public sentiment, and would be directly contrary to the clear intent of the transportation act.

SOLUTION BY EQUALIZING INCOME IMPRACTICABLE

The second suggestion, that of equalizing the income by a redistribution of earnings, even though sound in principle, presents difficulties which appear to be conclusive against it. It would require both the recapture of the excess earnings of the more favorably situated roads and the allocation of such earnings in varying amounts to the less favorably situated in accordance with the requirements of each. To take from some railroads a part of the income which they have received under a given schedule of rates, because they have received more

than that to which they are entitled under the service-at-cost principle, and to hand it over to other roads which have meanwhile received less than that to which they are entitled entails exact standardization of operating costs and maintenance charges, and standardization also of efficiency in management, for a road is entitled to its fixed return only provided it is efficiently operated. Such standardization is practically impossible. A given railroad management knowing that any excess earnings received by it are to be taken away will be constantly under temptation to conceal its excess earnings through an increase in operating expenses; it will not be under any incentive to keep costs down to the lowest amount consistent with safe and sound operation. Likewise, a management which knows that a shortage in its income is to be made up will have little incentive to keep the shortage small by economies in operation. Extravagances of corporate management to avoid payment of taxes is a phenomenon of recent development which illustrates the point.

RECAPTURE OF EXCESS EARNINGS ECONOMICALLY UNSOUND

In order to exercise all of its ingenuity in a competitive field each management must be assured that what it receives under established competitive conditions shall remain its own and shall not be handed over to a management which may be less resourcefull and less careful. To take away rewards to efficiency and to make awards to inefficiency (and this in the absence of exact standards of accounting and management) would destroy the incentive for railroad managements to take advantage of their opportunities in the knowledge that they may not keep everything that they receive. Under the one plan railroad management would inevitably become shiftless and extravagant; under the other, each management would constantly strive to conserve its resources and to become efficient.

DIFFICULTIES OF APPLICATION ILLUSTRATED

The difficulties of this method of solution are well illustrated by the controversy between the New England roads and the trunk lines over the division of joint rates. Negotiations which started to determine the equitable division of such rates between these roads, because of some implied authority in the act for giving weight to the circumstances of the roads concerned, developed into a contention for a redistribution of earnings on the basis of the needs of the roads.

In the hearings before the Interstate Commerce Commission testimony was presented purporting to show that rates had been established for the whole of the eastern territory higher than they would have been if New England had not been included, and that because of these higher rates the roads in the eastern territory outside of New England would receive approximately $25,000,000 more than if rates were made with a view to their requirements alone, without taking into account the cost of operation and property values of the New England roads. The New England roads contended that these excess earnings measured and established the amount which they were entitled to receive from the outside roads because of their inclusion in the rate group. This excess would be received in varying amounts by all railroads in the eastern territory, including roads which have no physical and no direct traffic connection with the New England roads. In this case, if it should be determined how much each road should pay into a fund equitably belonging to the New England roads, and if such payment should actually be made, there would remain the equally perplexing question of the equitable division of the fund among the several New England roads. The practical difficulties of solving the problem in this way have proved so great that no agreement has been reached, although negotiations have extended over many months under repeated requests of the Interstate Commerce Commission.

This single incident well illustrates some of the practical difficulties which would occur hundreds of times if the expedient of equalizing income by a redistribution of earnings were adopted in order to apply the service-at-cost principle.

CONSOLIDATIONS THE ONLY SOLUTION

From the foregoing it is clear that the service-at-cost method can not be applied successfully to competing companies unless they are uniform in essential respects. Unless such uniformity can be brought about, the operation of the rate-making provision of the transportation act will prove disappointing in the results attained. The question thus becomes this: Can the railroads of the country be consolidated into a limited number of competing systems of such uniform character and subject to such uniform operating conditions so that each and every system in a given rate-making territory will be able to earn the fair return upon the value of its property? Part II of this pamphlet answers this question in the affirmative by presenting such a plan of consolidation.

PART II. CONSOLIDATIONS—THEIR PURPOSE AND PRACTICABILITY

The discussion in Part I has shown that consolidations are necessary in order to establish the fiances of the railroads as a whole upon a sound basis. The primary purposes of making the railroads financially sound is to enable them to obtain capital readily and economically. To accomplish this fully other requirements must be met.

It will be of no avail to consolidate the railroads in such a way that each road hereafter existing will be enabled to receive, under a uniform rate, its fair return in a competitive field, unless each road is assured of a credit position clearly recognized by the investing public.

REPUTATION NECESSARY TO CREDIT

The requisites of credit are not only financial soundness but a reputation based upon conservative financial policies and management. This reputation at present is possessed only by the "strong" roads. It will not be secured readily by the "weak" roads merely by their financial reorganization, although, logically, this is all that is needed to insure the investment integrity of their securities.

BROAD MARKET FOR SECURITIES IMPORTANT

Furthermore, if capital is to be obtained upon the most advantageous terms by there roads, their securities must be made available for investment on the part of savings banks, insurance companies, and other semi-public institutions. Their securities, accordingly, must conform to the requirements governing the eligibility of such investments, and these requirements quite universally include, as an essential factor, dividend payments at given rates extending over a considerable period of time. The institutional market will not be available for the securities of roads which have found it necessary to readjust their capitalization in order to meet sound standards of credit until these roads have established for themselves the necessary record for dividend payments; nor will they be available at any time for the securities of the smaller systems, for these institutions, either because of legislative restrictions or of investment policies, for the most part confine their investments to securities of the larger systems.

To establish the necessary credit position and to give access to the most favorable security markets the "strong" roads must be used as the backbones of the new systems.

CONSOLIDATION WOULD NOT DESTROY THE CREDIT OF THE "STRONG ROADS"

Much of the opposition to consolidation has been and will continue to be based on the theory that their purpose is to strengthen the "weak" by weakening the "strong" roads and that the credit of the "strong" roads will thereby be impaired. If this result is to follow, it goes without saying that voluntary consolidation in a large way will never take place.

This conception of the problem, however, proceeds largely on the assumption that the "weak" roads generally are less favorably situated. It does not take into account the fact that approximately 25 per cent of the country's traffic is handled by systems which are "weak" only in their capitalization, but are similar to the "strong" roads both in operating conditions and in favorableness of location, and, if similarly capitalized, would have similar financial strength. (The similarity and differences of these two groups of roads are fully discussed in Part I, pp. 10–15.)

SOUND FINANCIAL STRUCTURE A PREREQUISITE

The contention that the credit of the so-called "strong" roads will be impaired by merging with the "weak" roads, in so far as it applies to such systems as are here referred to, can be upheld only on the theory that the amount of existing capitalization rather than property value, is to be the controlling factor in deter-

mining the basis of consolidations, and that adjustment of capitalization to conform to property value is not to be made at the time or before consolidations take place. Such readjustments, however, are required by the provision of the transportation act which stipulates that "the bonds at par of a corporation which is to become the owner of the consolidated properties, together with the outstanding capital stock at par of such corporation, shall not exceed the value of the consolidated properties as determined by the commission." Thus in the process of consolidation over-capitalization will be eliminated wherever it is found.

The problem of consolidations, therefore, has to do largely with the merging of roads whose main difference is a matter of capitalization, inasmuch as the remaining roads—the less favorably situated—handle not over 15 per cent of the country's traffic.

Even the absorption of these roads need not prove a burden, provided proper recognition is given to the property values and relative earning capacity of the several companies involved.

DIFFICULTIES OVERESTIMATED

While the complexity of the problem of harmonizing the many interests concerned is fully appreciated, it is sufficient here to say that, if the public interest requires that such consolidation be made, the difficulties of making them on a basis which will fully recognize the rights of all parties appear to be no greater than those which have been met successfully many times heretofore in railroad and industrial consolidations.

CONSOLIDATIONS ESSENTIAL TO HEALTHFUL COMPETITION

While this discussion has concerned itself thus far principally with the relation of consolidations to credit, nevertheless, consolidations are important to carry out other essential provisions of the transportation act. The act specifically stipulates that transportation must be furnished at the lowest cost consistent with adequate service.

Congress adopted the premise that private ownership and operation would secure greater efficiency than Government ownership and that competition would assure greater economy in operation than a monopoly.

WASTEFUL COMPETITION SHOULD BE ELIMINATED

There has been much misapprehension as to the kind of competiton contemplated by the act. It should be emphasized that inasmuch as the primary purpose of competition is to promote efficiency and economy, the competition intended is only such as may be expected to serve these purposes. Competition which would require duplication of facilities or which in any way would increase the cost of service, would be clearly inconsistent with the purposes of the act. The act calls for a limited number of systems so competing as to secure economical service through efficiency of operation.

CHARACTER OF THE COMPETITION TO BE PRESERVED

Under the policy of rate making established by the transportation act the amount of income in a given territory is to be limited to an amount which will equal the fair return on the aggregate value of the property of the roads as a whole in the territory. As railroads have no control over rates to be charged for service and as they are forbidden by law from discriminating in favor of either individuals or communities, competition resolves itself into a contest among the roads in each district for such part of the available income as each is able to obtain on the basis of the facilities which it can furnish and the quality of service which it can offer.

This is genuine competition, provided the companies are similarly situated so as to create equality of opportunity, for under such circumstances efficiency of operation alone would determine the income which each receives. Unless the companies are similarly situated, other factors, especially favorableness of location, would in part determine the receipt of income, and, in so far as such factors are unduly rewarded, efficiency of operation will fail to receive its just reward.

Congress has made competition an essential factor in the railroad policy of the country on the theory that competition provides the means of assuring adequate service with the greatest efficiency and economy. It is obvious that these purposes can not be served unless the companies engaged in competition have equal operating advantages and similar financial strength and credit standing; and that to establish these conditions it will be necessary to make further consolidations among existing systems.

CHARACTERISTICS OF COMPETING COMPANIES

The general character of the consolidations contemplated by the recent legislation are clearly indicated by section 407 of the transportation act of 1920 and may be summarized briefly as follows—

To combine all the railroads of the country into a limited number of self-supporting systems.

To group the roads so that "competition shall be preserved as fully as possible" among the systems serving the same territory and so that wherever practicable "the existing routes and channels of trade and commerce shall be maintained."

To arrange the systems so that "the cost of transportation as between competitive systems" shall be substantially uniform, so that "these systems can employ uniform rates in the movement of competitive traffic and under efficient management earn substantially the same rate of return upon the value of their respective railway properties."

In order that the interests of all concerned may be fully considered before a definite plan is adopted, the act provides that the Interstate Commerce Commission shall first prepare a tentative plan, and that "when the commission has agreed upon a tentative plan, it shall give the same due publicity and upon reasonable notice, including notice to the governor of each State, shall hear all persons who may file or present objections thereto." The act further provides that "after the hearings are at an end, the commission shall adopt a plan for such consolidation and publish the same." After the adoption of the permanent plan, the consolidations which are authorized and approved by the commission "shall be in harmony with such plan."

The transportation act does not fix the number of systems, as the exact number can only be determined after consideration of the whole subject.

SCOPE OF TENTATIVE PLAN

A tentative plan of consolidation necessitates the consideration only of combinations to be made among the larger systems, for such systems, as they control a substantial part of the mileage and traffic of the country, must necessarily be the foundation of any general plan. The smaller roads can not be placed until the basic systems are determined; and with these definitely fixed, the logical disposition of such roads will in most cases become apparent.

In the preparation of a tentative plan the number of roads to be considered is not large. Prior to Federal control 80 per cent of the mileage of the country was operated by 109 roads so related by stock ownership, lease or otherwise, as to constitute 30 systems; and 88 per cent of the revenues was obtained from traffic handled by these systems. Approximately 7 per cent of the mileage was operated by 17 additional roads so related as to constitute 15 systems; 6 per cent of the revenue was obtained from their traffic. Thus, as 87 per cent of the mileage and 94 per cent of the revenues were within the control of 45 systems, only about 13 per cent of the mileage and 6 per cent of the revenues were within the contol of the smaller systems.

The 30 systems referred to are listed in Table VIII below; the 15 in Table IX; and a summary of all the systems and roads classified on the basis of their mileage and earnings, with the relative mileage and earnings of each class to the total of the country, will be found in Table X.

TABLE VIII

[The 30 systems listed below comprise all systems which, with their controlled or affiliated companies, as of June 30, 1916, had annual gross operating income of $25,000,000 or over. The names of the affiliated companies constituting the various systems as of June 30, 1916, with minor exceptions and except as noted will be found by reference to the description of the systems on pp. 33–40]

Number of Class I roads in each system constituting roads owned and controlled as of June 30, 1916	System	Average for test period: Mileage operated	Average for test period: Gross operating income
	Eastern:		
12	Pennsylvania R. R.	11,476.70	$405,623,546
10	New York Central [1]	13,331.22	343,785,402
2	Baltimore & Ohio	4,563.50	110,216,356
4	Philadelphia & Reading [2]	1,998.88	92,680,217
3	New York, New Haven & Hartford R. R.	2,870.15	88,621,495
3	Erie R. R.	2,396.15	73,197,134
4	Chesapeake & Ohio	2,848.95	59,077,915
1	Norfolk & Western	2,062.11	53,800,498
1	Boston & Maine	2,286.36	1,913,506
1	Delaware, Lackawanna & Western	956.27	48,923,528
1	Lehigh Valley	1,443.45	47,023,053
2	Wabash	3,031.02	42,449,571
1	Delaware & Hudson	883.41	25,411,263
	Southern:		
9	Atlantic Coast Line	12,755.01	125,895,041
7	Southern Ry.	9,684.36	107,892,747
3	Illinois Central	8,071.04	97,818,454
1	Seaboard	3,445.88	24,926,111
	Western:		
8	Northern Pacific [3]	18,916.06	202,039,732
8	Southern Pacific	10,884.31	154,162,290
4	Atchison	11,745.52	139,897,726
5	Union Pacific	9,304.28	117,691,478
2	Chicago & Northwestern	9,860.63	111,048,825
1	Chicago, Milwaukee & St. Paul	10,221.52	103,164,598
1	Great Northern	8,094.45	78,548,635
2	Chicago, Rock Island & Pacific	8,297.79	77,958,555
2	Missouri Pacific	7,348.14	66,076,724
3	St. Louis & San Francisco [4]	6,125.10	64,635,838
3	Minneapolis, St. Paul & Sault Ste. Marie	4,938.10	36,843,497
3	Missouri, Kansas & Texas	3,865.04	35,340,021
2	Denver & Rio Grande	3,518.64	32,221,710
[5] 109		[6] 197,224.04	[7] 3,018,915,466

[1] Includes New York, Chicago & St. Louis, since sold.
[2] Includes Central of New Jersey.
[3] Includes Chicago, Burlington & Quincy which is controlled jointly by the Great Northern.
[4] Includes Chicago & Eastern Illinois, since sold.
[5] Includes 109 Class I roads of a total of 169.
[6] Represents 80.3 per cent of the mileage of all roads in the United States.
[7] Represents 88.2 per cent of the gross operating revenue of all roads in the United States.

TABLE IX

The 15 systems listed below comprise all systems which, with their controlled or affiliated companies, as of June 30, 1916, had annual gross operating income of $10,000,000 but less than $25,000,000. The names of the affiliated companies constituting the various systems as of June 30, 1916, with minor exceptions and except as noted, will be found by reference to the description of the systems on pp. 33–40]

Number of class I roads in each system constituting roads owned and controlled as of June 30, 1916	System	Average for test period: Mileage operated	Average for test period: Gross operating income
	Eastern:		
1	Pere Marquette	2,271.73	$20,843,657
1	Elgin, Joliet & Eastern	788.78	12,192,426
1	Maine Central	1,219.73	12,328,910
1	Buffalo, Rochester & Pittsburg	586.50	11,667,747
1	Western Maryland	694.50	10,791,912
1	Bessemer & Lake Erie	204.63	10,362,886
	Western:		
1	Texas Pacific	1,944.82	19,834,671
1	Chicago & Alton	1,051.86	16,637,024
1	Chicago & Great Western	1,459.84	15,157,101
2	St. Louis & Southwestern	1,753.81	12,910,439
2	Kansas City Southern	836.51	11,023,296
1	El Paso & Southwestern	1,027.61	10,878,268
1	Minnesota & St. Louis	1,646.56	10,590,733
1	Duluth, Missabe & Northern	390.06	10,552,080
1	International & Great Northern	1,159.50	10,107,915
[1] 17		[2] 17,036.44	[3] 195,879,065

[1] Includes 17 Class I roads of a total of 169.
[2] Represents 6.9 per cent of the mileage of all roads in the United States.
[3] Represents 5.7 per cent of the gross operating revenue of all roads in the United States.

TABLE X.—*Summary showing proportionate part of the total mileage and total revenue of the country handled by various classes of roads*

Roads with total gross operating income of	Number of systems	Number of controlled or affiliated companies	Total roads in the group	Combined mileage	Per cent to total	Combined gross operating income	Per cent to total
$25,000,000 or over	30	79	109	197,224.04	80.3	$3,018,915,466	88.2
$10,000,000 to $25,000,000	15	2	17	17,036.44	6.9	195,879,065	5.7
$10,000,000 or under	42	1	43	14,199.49	5.8	104,974,736	3.1
Total Class I roads	87	82	[1] 169	228,459.97	93.0	$3,319,769,267	97.0
Estimated total for Class II and III roads				17,321.73	7.0	103,411,445	3.0
Approximate total for Class I, II, and III roads				245,781.70	100.0	3,423,180,712	100.0

[1] The slight variation from that which appeared on page 23 in the pamphlet A Comprehensive Plan for Railroad Consolidation is due to the omission here of the Canadian Pacific lines in Maine, the Duluth Winnipeg & Pacific, and the Grand Trunk lines in the United States.

The concentration of ownership which is indicated by these tables is significant as it shows: That substantial progress has already been made in the direction of establishing a national system of transportation along the lines called for by the transportation act; that the suggestion for further consolidation is consistent with the tendencies under which the representative systems of the country have been developed, and that the difficulties incident to such consolidations are not as great as they frequently have been made to appear.

These tables also make it clear that a national system of transportation as proposed can not be established if consolidations are to be voluntary except through the cooperation and by the consent of the owners of the 30 systems listed in Table VIII. With such cooperation, the problem of a comprehensive plan of railroad consolidations, such as the transportation act contemplates, will be largely solved.

In the preparation of the following plan, the roads have been segregated into three general groups, which may be described as the eastern, southern, and western. The systems for the most part are developed by combining the various roads within each group. While it may prove to be desirable to make some changes eventually in the ownership or control now existing, for present purposes, the relationships heretofore established, with few exceptions, have not been disturbed. Thirteen systems in all are proposed: 5 for the eastern district; 2 for the southern; and 6 for the western.

The tables given on pages 44–46 show the similarity of the proposed systems. To demonstrate the extent to which competition has been preserved a list of the larger cities in the United States is given on pages 48–49 designating by which systems each is to be served. A brief desciption of 13 systems will be found on pages 50–60, giving some of the fundamental considerations involved in this grouping of the roads. The maps following the text show the proposed systems in colors and indicate the individual roads by number.

The roads constituting the various systems, together with their mileage and earning, are as follows:

PROPOSED SYSTEMS

SYSTEM 1.—*New York Central system*

No.	Name	Mileage	Gross earnings	Gross per mile
2	New York Central	6,075.50	$203,060,842	$33,423
12	Cleveland, Cincinnati, Chicago & St. Louis	2,382.43	42,904,858	18,009
13	Michigan Central	1,854.87	41,756,671	22,512
18	Pittsburgh & Lake Erie	224.58	20,559,224	91,545
40	Toledo & Ohio Central	438.64	5,736,686	13,078
60	Cincinnati Northern	245.70	1,830,991	7,452
46	Kanawha & Michigan	176.60	3,297,455	18,672
37	Lake Erie & Western	900.01	6,859,306	7,622
15	Central of New Jersey	682.78	32,490,917	47,586
31	New York, Ontario & Western	568.46	8,874,397	15,611
70	Ulster & Delaware	128.88	1,023,519	7,942
		13,678.45	368,394,866	26,932
	LINES AT PRESENT CONTROLLED BY TWO OR MORE SYSTEMS			
56	Lehigh & Hudson [1]	96.60	2,053,781	21,261
59	Monongahela [2]	92.41	1,690,183	18,290
	NEW ENGLAND SYSTEM			
	(To be jointly controlled by four of the trunk-line systems. Also shown on Maps 2, 3, 4)			
44	Rutland	463.11	3,831,743	8,264
8	Boston & Maine	2,286.36	51,913,506	22,706
25	Maine Central	1,219.73	12,328,910	10,101
45	Bangor & Aroostook	631.73	3,955,357	6,261
4	New York, New Haven & Hartford	1,998.83	74,927,908	37,485
41	Central New England	302.86	4,819,190	15,912
		6,902.62	151,776,614	21,988

[1] Also in systems 2, 3, 4.
[2] Also in system 3.

SYSTEM 2.—*Buffalo system*

No.	Name	Mileage	Gross earnings	Gross per mile
6	Erie	1,987.84	$62,401,580	$31,392
33	Chicago & Erie	269.56	7,455,155	27,657
47	New York, Susquehanna & Western	138.75	3,340,399	24,075
14	Wabash [1]	2,518.89	34,270,522	13,606
30	Wheeling & Lake Erie	512.13	8,179,049	15,971
19	Pere Marquette	2,271.73	20,843,657	9,176
21	New York, Chicago & St. Louis	569.78	13,947,626	24,479
16	Delaware & Hudson	883.41	25,411,263	28,764
9	Delaware, Lackawanna & Western	956.27	48,923,528	51,161
26	Buffalo, Rochester & Pittsburgh	586.50	11,667,747	19,894
27	Bessemer & Lake Erie	204.63	10,362,886	50,642
30a	Pittsburgh & West Virginia	63.31	1,080,449	17,066
23	Elgin, Joliet & Eastern	788.78	12,192,426	15,457
63	Buffalo & Susquehanna	252.56	1,604,078	6,351
		12,004.14	261,680,365	20,966
	LINE AT PRESENT CONTROLLED BY TWO OR MORE SYSTEMS			
56	Lehigh & Hudson [2]	96.60	2,053,781	21,261
	NEW ENGLAND SYSTEM			
	(To be jointly controlled by four of the trunk-line systems. Also shown on Maps 1, 3, 4)			
44	Rutland	463.11	3,831,743	8,264
8	Boston & Maine	2,286.36	51,913,506	22,706
25	Maine Central	1,219.73	12,328,910	10,108
45	Bangor & Aroostook	631.73	3,955,357	6,261
4	New York, New Haven & Hartford	1,998.83	74,927,908	37,485
41	Central New England	302.86	4,819,190	15,912
		6,902.62	151,776,614	21,988

[1] Lines west of St. Louis in Great Northern-St. Paul system.
[2] Also in systems 1, 3, 4.

SYSTEM 3.—*Pennsylvania system*

No.	Name	Mileage	Gross earnings	Gross per mile
1	Pennsylvania Railroad	4,559.45	$215,428,766	$47,249
5	Pennsylvania Co	1,756.74	67,119,283	38,206
	Pittsburgh, Cincinnati, Chicago & St. Louis	2,397.98	59,450,509	24,792
17	Philadelphia, Baltimore & Washington	717.32	24,001,572	33,460
39	Grand Rapids & Indiana	573.32	5,716,575	9,971
22	Long Island	397.22	14,284,869	35,962
42	New York, Philadelphia & Norfolk	124.22	4,626,775	37,246
35	West Jersey & Seashore	359.06	7,355,513	20,485
48	Cumberland Valley	163.67	3,528,025	21,555
68	Baltimore, Chesapeake & Atlantic	87.61	1,200,911	13,707
172	Toledo, Peoria & Western	247.70	1,220,565	4,927
		11,384.29	403,933,363	35,481
	LINES AT PRESENT CONTROLLED BY TWO OR MORE SYSTEMS			
56	Lehigh & Hudson [1]	96.60	2,053,781	21,261
59	Monongahela [2]	92.41	1,690,183	18,290
88	Richmond, Fredericksburg & Potomac [2]	87.68	3,475,207	39,635
101	Washington Southern [3]	35.57	1,647,852	46,327
	NEW ENGLAND SYSTEM			
	(To jointly controlled by four of the trunk-line systems. Also shown on maps 1, 2, 4)			
44	Rutland	463.11	3,831,743	8,264
8	Boston & Maine	2,286.36	51,913,506	22,706
25	Maine Central	1,219.73	12,328,910	10,108
45	Bangor & Aroostook	631.73	3,955,357	6,261
4	New York, New Haven & Hartford	1,998.83	74,927,908	37,485
41	Central New England	302.86	4,819,190	15,912
		6,902.62	151,776,614	21,988

[1] Also in systems 1, 2, 4. [2] Also in system 1. [3] Also in systems 4, 5, 6, 7.

SYSTEM 4.—*Baltimore-Reading system*

No.	Name	Mileage	Gross earnings	Gross per mile
3	Baltimore & Ohio	4,539.96	$108,665,110	$23,935
65	Staten Island Rapid Transit	23.54	1,551,246	65,898
7	Philadelphia & Reading	1,104.76	55,803,929	49,614
61	Port Reading	21.16	1,818,575	85,944
53	Atlantic City	170.18	2,566,796	15,083
104	Coal & Coke	197.30	1,100,109	5,576
51	Ann Arbor	295.68	2,661,519	9,001
64	Cincinnati, Indianapolis & Western	321.68	2,477,850	7,703
28	Western Maryland	694.50	10,791,912	15,539
30b	Toledo, St. Louis & Western	453.55	5,560,324	12,260
10	Lehigh Valley	1,443.45	47,023,053	32,576
		9,265.76	240,020,423	25,904
	LINES AT PRESENT CONTROLLED BY TWO OR MORE SYSTEMS			
56	Lehigh & Hudson [1]	96.60	2,053,781	21,261
101	Washington Southern [2]	35.57	1,647,852	46,327
88	Richmond, Fredericksburg & Potomac [2]	87.68	3,475,207	39,635
	NEW ENGLAND SYSTEMS			
	(To be jointly controlled by four of the trunk-line systems. Also shown on Maps 1, 2, 3)			
44	Rutland	463.11	3,831,743	8,264
8	Boston & Maine	2,286.36	51,913,506	22,706
25	Maine Central	1,219.73	12,328,910	10,108
45	Bangor & Aroostook	631.73	3,955,357	6,261
4	New York, New Haven & Hartford	1,998.83	74,927,908	37,485
41	Central New England	302.86	4,819,190	15,912
		6,902.62	151,776,614	21,988

[1] Also in systems 1, 2, 3.
[2] Also in systems 3, 5, 6, 7.

SYSTEM 5.—*Norfolk & Western-Chesapeake & Ohio*

No.	Name	Mileage	Gross earnings	Gross per mile
75	Chesapeake & Ohio	2,374.98	$46,322,284	$19,504
36	Hocking Valley	350.72	7,632,572	21,763
74	Norfolk & Western	2,062.11	53,800,498	26,090
83	Virginian	506.53	7,570,315	14,945
91	Carolina, Clinchfield & Ohio	271.44	2,854,624	10,517
		5,565.78	118,180,293	21,233
	LINES AT PRESENT CONTROLLED BY TWO OR MORE SYSTEMS			
101	Washington Southern [1]	35.57	1,647,852	46,327
88	Richmond, Fredericksburg & Potomac [1]	87.68	3,475,207	39,635

[1] Also in systems 3, 4, 6, 7.

SYSTEM 6.—*Atlantic Coast Line-Louisville & Nashville system*

No.	Name	Mileage	Gross earnings	Gross per mile
76	Atlantic Coast Line	4,718.08	$35,464,175	$7,517
73	Louisville & Nashville	5,052.18	60,597,491	11,994
79	Nashville, Chattanooga & St. Louis	1,232.68	12,613,336	10,232
96	Charleston & West Carolina	341.88	1,925,040	5,631
100	Louisville, Henderson & St. Louis	199.80	1,655,678	8,287
89	Georgia	329.98	3,251,141	7,853
102	Atlanta & West Point	93.12	1,373,126	14,746
34	Chicago, Indianapolis & Louisville [1]	327.00	3,836,962	11,734
		12,294.72	120,716,949	9,819
	LINES AT PRESENT CONTROLLED BY TWO OR MORE SYSTEMS			
101	Washington Southern [2]	35.67	1,647,852	46,327
88	Richmond, Fredericksburg, & Potomac [2]	87.68	3,475,207	39,635
103	Western Railway of Alabama [3]	133.30	1,341,130	10,061

[1] This road will be jointly controlled by the Atlantic Coast Line-Louisville & Nashville system and the Southern system, one-half of the mileage and figures being used in each system.
[2] Also in systems 3, 4, 5, 7.
[3] Also in system 13.

SYSTEM 7.—*Southern system*

No.	Name	Mileage	Gross earnings	Gross per mile
71	Southern	7,018.06	$71,974,418	$10,256
81	Mobile & Ohio	1,135.09	11,903,351	10,487
85	Alabama Great Southern	310.53	5,585,318	17,986
105	Southern Railway in Mississippi	279.84	1,100,457	3,933
82	Cincinnati, New Orleans & Texas Pacific	337.27	10,983,183	32,565
87	New Orleans & Northeastern	203.73	3,859,772	18,946
34	Chicago, Indianapolis & Louisville [1]	327.00	3,836,962	11,734
98	Alabama & Vicksburg	142.74	1,701,714	11,924
165	Vicksburg, Shreveport & Pacific	171.47	1,667,937	9,729
84	Florida East Coast	741.04	7,206,392	9,725
77	Seaboard	3,445.88	24,926,111	7,234
92	Georgia Southern & Florida	399.84	2,486,248	6,218
		14,512.49	147,231,863	10,145
	LINES AT PRESENT CONTROLLED BY TWO OR MORE SYSTEMS			
101	Washington Southern [2]	35.57	1,647,852	46,327
88	Richmond, Fredericksburg & Potomac [2]	87.68	3,475,207	39,635

[1] This road will be jointly controlled by the Southern system and the Atlantic Coast Line-Louisville & Nashville system, one-half of the mileage and figures being used in each system.
[2] Also in systems 3, 4, 5, 6.

SYSTEM 8.—*Great Northern-St. Paul system*

No.	Name	Mileage	Gross earnings	Gross per mile
111	Great Northern	8,094.45	$78,548,635	$9,704
142	Spokane, Portland & Seattle [1]	277.36	2,569,401	9,264
108	Chicago, Milwaukee & St. Paul	10,221.52	103,164,598	10,093
14	Wabash [2]	390.06	10,552,080	27,052
129	Duluth, Missabe & Northern	278.54	6,043,443	21,697
138	Duluth & Iron Range	4,750.92	47,113,030	9,917
115	St. Louis-San Francisco	239.41	1,165,568	4,869
146	St. Louis, San Francisco & Texas	525.93	8,318,512	15,817
125	Chicago & Alton [3]	24,778.19	257,475,267	10,391

[1] This road will be jointly controlled by the Great Northern-St. Paul system and the Northern Pacific-Burlington system, one-half of the mileage and figures being used in each system.
[2] Lines of this system west of St. Louis. Lines east of St. Louis and total figures are shown in the Buffalo system.
[3] This road will be jointly controlled by the Great Northern-St. Paul system and the Union Pacific-Northwestern system, one-half of the mileage and figures being used in each system.

SYSTEM 9.—*Northern Pacific-Burlington system*

No.	Name	Mileage	Gross earnings	Gross per mile
112	Northern Pacific	6,501.95	$74,857,779	$11,513
142	Spokane, Portland & Seattle [1]	277.36	2,569,401	9,264
135	Colorado Southern	1,099.76	8,810,988	8,012
140	Fort Worth & Denver City	454.14	5,79[illegible],831	12,767
109	Chicago, Burlington & Quincy	9,359.90	103,814,782	11,091
166	Colorado Midland	337.64	1,615,559	4,875
176	Trinity & Brazos Valley	351.23	1,002,119	2,853
177	Wichita Valley	256.71	1,001,872	3,903
127	Chicago Great Western	1,459.84	15,157,101	10,383
121	Denver & Rio Grande	2,573.83	24,763,649	9,621
137	Western Pacific	944.81	[illegible],458,061	[illegible],894
133	Kansas City Southern Texarkana & Fort Smith	836.51	11,023,296	13,185
		24,453.68	257,872,438	10,545

[1] This road will be jointly controlled by the Great Northern-St. Paul system and the Northern Pacific-Burlington system, one-half of the mileage and figures being used in each system.

SYSTEM 10.—*Union Pacific-Northwestern system*

No.	Name	Mileage	Gross earnings	Gross per mile
114	Union Pacific [1]	3,619.46	$61,986,599	$17,126
120	Oregon Short Line	2,235.06	24,780,729	11,087
124	Oregon-Washington & Navigation	2,031.84	17,939,712	8,829
130	Los Angeles & Salt Lake	1,157.85	11,075,453	9,566
158	St. Joseph & Grand Island	260.07	1,908,985	7,340
181	Central Pacific [1]			
110	Chicago & Northwestern	8,107.82	91,542,024	11,291
122	Chicago, St. Paul, Minneapolis & Omaha	1,752.81	19,506,801	11,129
125	Chicago & Alton [2]	525.93	8,318,512	15,817
118	Missouri, Kansas & Texas Missouri, Kansas & Texas of Texas Wichita Falls & Northwestern	3,865.04	35,340,021	9,144
		23,555.88	272,398,836	11,564

[1] The Central Pacific has been placed with the Union Pacific-Northwestern system, but the figures of the Central Pacific are included with those of the Southern Pacific system.
[2] This road will be jointly controlled by the Union Pacific-Northwestern system and the Great Northern St. Paul system, one-half of the mileage and figures being used in each system.

SYSTEM 11.—*Atchison system*

No.	Name	Mileage	Gross earnings	Gross per mile
107	Atchison, Topeka & Santa Fe	8,626.94	$114,019,747	$13,217
145	Northwestern Pacific	471.86	4,194,169	8,889
141	Panhandle & Santa Fe	709.29	5,387,362	7,595
126	Gulf, Colorado & Santa Fe	1,937.43	16,296,448	8,411
20	Chicago & Eastern Illinois [1]	567.38	8,178,620	14,415
123	Texas & Pacific	1,944.82	19,834,671	10,199
123a	New Orleans, Texas & Mexico	243.80	1,503,574	6,167
123b	St. Louis, Brownsville & Mexico	548.18	3,221,309	5,876
134	International & Great Northern	1,159.50	10,107,915	8,718
119	Missouri Pacific	7,348.14	66,076,724	8,992
117	St. L. Iron Mt. & Southern			
		23,557.34	248,820,539	10,562

[1] This road will be jointly controlled by the Atchison system and the Southern Pacific system, one-half of the mileage and figures being used in each system.

SYSTEM 12.—*Southern Pacific system*

No.	Name	Mileage	Gross earnings	Gross per mile
106	Southern Pacific [1]	6,990.90	$115,870,170	$16,575
149	Arizona Eastern	374.08	3,304,983	8,835
128	Galveston, Harrisburg & San Antonio	1,355.80	14,167,759	10,450
139	Houston & Texas Central	893.13	7,022,858	7,863
144	Texas & New Orleans	468.48	4,683,962	9,998
167	Houston East & West Texas	190.94	1,532,556	8,027
152	Louisiana Western	207.74	2,580,656	12,422
143	Morgan's Louisiana & Texas	403.24	4,999,346	12,398
171	Kansas City, Mexico & Orient	737.62	2,522,892	3,420
147	San Antonio & Aransas Pass	727.80	4,003,622	5,500
113	Chicago, Rock Island & Pacific	7,821.02	74,724,444	9,554
150	Chicago, Rock Island & Gulf	476.77	3,264,111	6,846
132	El Paso & Southwestern	1,027.61	10,878,268	10,586
136	St. Louis Southwestern	943.31	8,500,314	9,011
174	St. Louis Southwestern of Texas	810.50	4,410,125	5,441
20	Chicago & Eastern Illinois [2]	567.39	8,178,620	14,415
		23,996.33	270,644,686	11,278

[1] The Central Pacific has been placed with the Union Pacific-Northwestern system, but the figures of the Central Pacific are included with those of the Southern Pacific System.
[2] This road will be jointly controlled by the Atchison System and the Southern Pacific System, one-half of the mileage and figures being used in each system.

SYSTEM 13.—*Illinois Central-Soo system*

No.	Name	Mileage	Gross earnings	Gross per mile
72	Illinois Central	4,767.81	$70,595,781	$14,807
78	Yazoo & Mississippi	1,380.77	14,059,523	10,187
80	Central of Georgia	1,922.46	13,163,150	6,847
182	Minneapolis & St. Louis	1,646.56	10,590,733	6,437
116	Minneapolis, St. Paul & Sault Ste. Marie	4,207.61	32,305,808	7,678
148	Duluth South Shore & Atlantic	610.48	3,506,694	5,744
160	Mineral Range	120.01	1,030,995	8,591
		14,655.70	145,252,684	9,911
	LINE AT PRESENT CONTROLLED BY TWO OR MORE SYSTEMS			
103	Western Railway of Alabama [3]	133.30	1,341,130	10,061

[3] Also in system 6.

Summary of mileage and income of proposed systems

	Number of class I roads included	Number of miles operated	Earnings per mile operated	Average annual railway operating income	Per cent earnings to total of all roads
Eastern systems:					
New York Central	11	13,678.45	$26,932	$368,394,866	
Buffalo	14	12,004.14	20,966	261,680,365	
Pennsylvania	11	11,384.29	35,481	403,933,363	
Baltimore-Reading	11	9,265.76	25,904	240,020,423	
Norfolk & Western-Chesapeake & Ohio	5	5,565.78	21,233	118,180,293	
Total eastern systems	52	51,898.42	----------	1,392,209,310	40.7
Southern systems:					
Atlantic Coast Line-Louisville & Nashville	8	12,294.72	9,819	120,716,949	
Southern	11	14,512.49	10,145	147,231,863	
Total southern systems	19	26,807.21	----------	267,948,812	7.8
Western systems:					
Great Northern-St. Paul	7	24,778.19	10,391	257,475,267	
Northern Pacific-Burlington	12	24,453.68	10,545	257,872,438	
Union Pacific-Northwestern	11	23,555.88	11,564	272,398,836	
Atchison	11	23,557.34	10,562	248,820,539	
Southern Pacific	15	23,996.33	11,278	270,744,686	
Illinois Central-Soo	7	14,655.70	9,911	145,252,684	
Total western systems	63	134,997.12	----------	1,452,464,450	42.5
Roads to be jointly controlled [1]	11	7,348.18	----------	161,984,767	4.7
Total, all systems	145	221,050.93	----------	3,274,607,339	95.7

[1] Mileage and gross earnings not included in the above.

Summary—All roads in the United States

	Mileage	Gross operating income	Per cent earnings to total of all roads
Class I roads, included in proposed systems, 145	221,050.93	$3,274,607,339	95.7
Class I roads, not included in proposed systems, 24	7,409.04	45,161,928	1.3
Class II and Class III roads, partly estimated	17,321.73	103,411,445	3.0
Total, all roads	245,781.70	3,423,180,712	100.0

It will be seen from the above table that included in the 13 systems are 145 of the 169 roads which were designated on June 30, 1926, as class I roads; that the aggregate earnings of these 145 roads—on the basis of statements covering the test period—were 95.7 per cent of the total of the country; and that the earnings of the remaining 24 Class I roads, together with the earnings of all Class II and Class III roads combined, were but a little over 4 per cent of the total.

A BRIEF DESCRIPTION OF THE DISTRICTS

Eastern district.—Chicago and St. Louis would be western terminals for all the Eastern systems except for the Norfolk & Western-Chesapeake & Ohio system, which would reach Chicago but not St. Louis.

New York and adjacent cities and all the important cities in New England, through the joint control of the New England roads, would be eastern terminal points for the same systems.

Philadelphia, Baltimore, and Washington would be addiitonal terminal points for two of these systems.

Most of the large cities located in the East and Central West would be served by four systems, some by three, and all, with minor exceptions, by at least two.

Southern district.—The two systems in the southern district would compete with each other at practically all points. Each of these systems would extend from all important centers in the South to Chicago, St. Louis, Louisville, Cincinnati, and Washington.

Western district.—Chicago and St. Louis would also be eastern terminal points for all six Western systems. San Francisco and Portland would be the Pacific coast terminals for four, and Seattle, Tacoma, and Los Angeles for three

systems. Omaha would be reached by all six; Minneapolis, St. Paul, Duluth, Houston, Kansas City, Des Moines, and Fort Worth by five. Many of the other large cities would be served by four, and all by two or more.

The three Northwestern systems would not only extend from the Pacific coast to Chicago and St. Louis, but also would have lines extending to the Southwest. Five of the western systems would be competitors in the Southwest for business to and from Chicago and St. Louis.

The Illinois Central system would be a north and south system extending from the Canadian border to the Gulf with service to the principal intervening cities. It would be a competitor of the Atchison and the Southern Pacific systems for business between New Orleans, St. Louis, and Chicago.

As Chicago and St. Louis would be terminals for both the eastern and western systems, traffic relations could be established between systems in the two districts which would give coast to coast service as completely and effectively as a transcontinental system

Each of the 13 systems would be a complete unit in itself, and to a large extent the business originating on the lines of any system for points within the district, of which it is a part, could reach its destination over the lines of the same system on which it originated.

SIMILARITY OF THE PROPOSED SYSTEMS

The following comparative tables are presented in order to show clearly the similarity in traffic and operating conditions of each proposed consolidated system competing in the same territory.

EASTERN SYSTEMS

Statement of operating income and expenses of proposed consolidated systems

[Average for 3 years from June 30, 1915, to June 30, 1917]

	Number miles operated	Railway operating income	Operating expenses and taxes (not including maintenance)	Maintenance [1]	Total operating expenses—(taxes and maintenance)	Net railway operating income
New York Central	13,678.45	$368,394,866	$165,251,295	$99,970,816	$265,222,111	$103,172,755
Buffalo	12,004.14	261,680,365	116,445,526	73,282,968	189,728,494	71,951,871
Pennsylvania	11,384.29	403,933,363	186,448,287	127,663,344	314,111,631	89,821,732
Baltimore-Reading	9,265.76	240,020,423	105,619,160	68,192,163	173,811,323	66,209,100
Norfolk & Western-Chesapeake & Ohio	5,565.78	118,180,293	43,009,453	36,359,033	79,368,486	38,811,807
		Per cent	*Per cent*	*Per cent*	*Per cent*	*Per cent*
New York Central	----------	100.0	44.8	30.8	75.6	24.4
Buffalo	----------	100.0	44.4	30.8	75.2	24.8
Pennsylvania	----------	100.0	46.2	30.8	77.0	23.0
Baltimore-Reading	----------	100.0	44.0	30.8	74.8	25.2
Norfolk & Western-Chesapeake & Ohio	----------	100.0	36.4	30.8	67.2	32.8

[1] As methods of accounting with respect to maintenance differ with different companies, for the sake of uniformity and for the purpose of affording a fairer comparison between individual companies, the maintenance charge in the percentage figures has been standardized for each group. For roads in the eastern district the amount was determined by taking the same percentage of the gross operating income, 30.8 per cent, that was charged to maintenance by the dividend-paying roads in the district averaged for the test period. The same method was followed in determining the standard of maintenance for the western and southern districts, but the amount varied so little, being 28.2 for the western roads and 28.8 for the southern, that the same figure, 28.2 per cent, was adopted for both districts.

Classification of tonnage for year ended June 30, 1916

	Percentages of tons of different kinds of products to total tonnage							
	Agriculture	Animals	Mines	Forests	Manufactures	Miscellaneous	Less than carload	Total
New York Central	7.9	2.2	56.6	4.5	22.0	5.6	1.2	100
Buffalo	8.7	2.1	59.5	3.7	19.3	3.1	3.6	100
Pennsylvania	5.6	1.5	60.2	5.3	18.3	3.8	5.3	100
Baltimore-Reading	6.3	1.4	63.3	4.1	16.0	3.3	5.6	100
Norfolk & Western-Chesapeake & Ohio	4.2	.6	78.4	5.8	9.1	.8	1.1	100

Statistics of operation for year ended June 30, 1916

	Gross earnings per mile road operated	Percentage of gross operating income				Average receipts per ton per mile	Average receipts per passenger per mile	Average number of tons per train-mile
		Freight income	Passenger income	Miscellaneous income	Total			
New York Central	$26,932	67.5	21.0	11.5	100	0.00637	0.01920	693
Buffalo	20,966	79.0	13.3	7.7	100	.00613	.01740	656
Pennsylvania	35,481	69.0	21.6	9.4	100	.00638	.01930	682
Baltimore-Reading	25,904	79.5	12.4	8.1	100	.00602	.01870	719
Norfolk & Western-Chesapeake & Ohio	21,233	84.1	10.8	5.1	100	.00400	.02140	1,033

SOUTHERN SYSTEMS

Statement of operating income and expenses of proposed consolidated systems

[Average for 3 years from June 30, 1915, to June 30, 1917]

	Number miles operated	Railway operating income	Operating expenses and taxes (not including maintenance)	Maintenance [1]	Total operating expenses (taxes and maintenance)	Net railway operating income
Atlantic Coast Line-Louisville & Nashville	12,294.72	$120,716,949	$51,963,904	$37,828,546	$89,792,450	$30,924,499
Southern	14,512.49	147,231,863	65,344,830	42,027,549	107,372,379	39,859,484
		Per cent	*Per cent*	*Per cent*	*Per cent*	*Per cent*
Atlantic Coast Line-Louisville & Nashville		100.0	43.0	[1] 28.2	71.2	28.8
Southern		100.0	44.4	28.2	72.6	27.4

[1] See note under Eastern systems, p. 503.

Classification of tonnage for year ended June 30, 1916

	Percentages of tons of different kinds of products to total tonnage							
	Agriculture	Animals	Mines	Forests	Manufactures	Miscellaneous	Less than carload	Total
Atlantic Coast Line-Louisville & Nashville	10.3	2.1	51.1	14.1	14.7	1.9	5.8	100
Southern	11.8	1.8	35.1	22.6	18.6	4.8	5.3	100

Statistics of operation for year ended June 30, 1916

	Gross earnings per mile road operated	Percentage of gross operating income				Average receipts per ton per mile	Average receipts per passenger per mile	Average number of tons per train-mile
		Freight income	Passenger income	Miscellaneous income	Total			
Atlantic Coast Line-Louisville & Nashville	$9,819	71.3	21.2	7.5	100	0.00807	0.02160	376
Southern	10,145	69.2	21.4	9.4	100	.00851	.02180	402

WESTERN SYSTEMS

Statement of operating income and expenses of proposed consolidated systems

[Average for 3 years from June 30, 1915, to June 30, 1917]

	Number miles operated	Railway operating income	Operating expenses and taxes (not including maintenance)	Maintenance [1]	Total operating expenses (taxes and maintenance)	Net railway operating income
Great Northern-St. Paul	24,778.19	$257,475,267	$107,936,414	$68,038,226	$175,974,640	$81,500,627
Northern Pacific-Burlington	24,453.68	257,872,438	104,620,295	67,929,018	172,549,313	85,323,125
Union Pacific-North Western	23,555.88	272,398,836	116,534,500	75,386,468	191,920,968	80,477,868
Atchison	23,557.34	248,820,539	102,627,403	76,812,422	179,439,825	69,380,714
Southern Pacific	23,996.33	270,644,686	121,412,251	75,056,461	196,468,712	74,175,974
Illinois Central-Soo	14,655.70	145,252,684	62,227,733	45,596,306	107,824,039	37,428,645
		Per cent	*Per cent*	*Per cent*	*Per cent*	*Per cent*
Great Northern-St. Paul		100.0	41.9	[1] 28.2	70.1	29.9
Northern Pacific-Burlington		100.0	40.5	28.2	68.7	31.3
Union Pacific-North Western		100.0	42.8	28.2	71.0	29.0
Atchison		100.0	41.2	28.2	69.4	30.6
Southern Pacific		100.0	44.7	28.2	72.9	27.1
Illinois Central-Soo		100.0	42.8	28.2	71.0	29.0

[1] See note under Eastern systems, p. 503.

Classification of tonnage for year ended June 30, 1916

	Percentages of tons of different kinds of products to total tonnage							
	Agriculture	Animals	Mines	Forests	Manufactures	Miscellaneous	Less than carload	Total
Great Northern-St. Paul	14.9	2.9	54.4	11.1	11.0	1.7	4.0	100
Northern Pacific-Burlington	19.7	4.6	42.6	11.8	13.8	2.6	4.9	100
Union Pacific-North Western	22.1	5.2	38.6	12.5	15.0	1.8	4.8	100
Atchison	20.2	4.4	38.5	14.2	16.6	1.2	4.9	100
Southern Pacific	20.7	4.0	38.4	13.7	16.9	1.3	5.0	100
Illinois Central-Soo	19.3	2.5	42.7	17.4	11.3	2.7	4.1	100

Statistics of operation for year ended June 30, 1916

	Gross earnings per mile road operated	Percentage of gross operating income				Average receipts per ton per mile	Average receipts per passenger per mile	Average number of tons per train-mile
		Freight income	Passenger income	Miscellaneous income	Total			
Great Northern-St. Paul	$10,391	73.4	18.0	8.6	100	0.00779	0.02160	554
Northern Pacific-Burlington	10,545	71.8	19.8	8.4	100	.00778	.01990	583
Union Pacific-North Western	11,564	68.5	22.4	9.1	100	.00861	.02020	464
Atchison	10,562	69.9	22.0	8.1	100	.00865	.02060	445
Southern Pacific	11,278	63.9	24.4	11.7	100	.00921	.02070	436
Illinois Central-Soo	9,911	73.0	19.4	7.6	100	.00672	.02020	498

WHAT THESE TABLES SHOW

With minor exceptions the foregoing tables show—that in the proposed grouping, systems have been created of about the same size and earning power; that the several systems competing in the same district obtained their earnings from passenger, freight, and miscellaneous traffic in similar proportions to the total; that the character of the tonnage was much the same; that the average rate per ton-mile and per passenger-mile was substantially uniform; and that under these conditions similar results from operation were obtained by all systems which competed with each other.

Therefore, it appears that the systems have been arranged in this grouping so as to lead to the conclusion that they could "employ uniform rates in the movement of competitive traffic and under efficient management earn substantially the same rate of return upon the value of their respective railway properties."

COMPETITION AMONG SYSTEMS

In order to show the extent to which each system will compete for traffic, the following table has been prepared which gives a list of the cities in the United States having in 1920 a population in excess of 75,000, designating by which systems each will be served.

Eastern district	New York Central system	Buffalo system	Pennsylvania system	Baltimore-Reading system	Norfolk & Western-Chesapeake & Ohio system
New England, all cities	X	X	X	X	
Missouri, St. Louis	X	X	X	X	
New York:					
New York	X	X	X	X	
Buffalo	X	X	X	X	
Rochester	X	X	X	X	
Syracuse	X	X			
Albany	X	X			
Yonkers	X				
Utica	X	X			
Schenectady	X	X			
Pennsylvania:					
Philadelphia			X	X	
Pittsburgh	X	X	X	X	
Scranton	X	X			
Reading			X	X	
Erie	X	X	X		
Harrisburg			X	X	
Maryland, Baltimore			X	X	
Delaware, Wilmington			X	X	
District of Columbia, Washington			X	X	X
New Jersey:					
Newark	X	X	X	X	
Jersey City	X	X	X	X	
Paterson		X			
Trenton	X		X	X	
Camden			X	X	
Elizabeth	X		X		
Bayonne	X		X	X	
Ohio:					
Cleveland	X	X	X	X	
Cincinnati	X	X	X	X	X
Toledo	X	X	X	X	X
Columbus	X		X	X	X
Akron		X	X	X	
Dayton	X	X	X	X	
Youngstown	X	X	X	X	
Canton		X	X	X	
Michigan:					
Detroit	X	X	X		
Grand Rapids	X	X	X		
Flint		X			
Indiana:					
Indianapolis	X		X	X	
Fort Wayne	X	X	X		
Evansville	X				
Illinois:					
Chicago	X	X	X	X	X
Peoria	X		X		
Kentucky, Louisville	X		X	X	X
Virginia:					
Richmond			X	X	X
Norfolk					X

Southern and western districts	Atlantic Coast Line-Louisville & Nashville system	Southern system	Great Northern-St. Paul system	Northern Pacific-Burlington system	Union Pacific-Northwestern system	Atchison system	Southern Pacific system	Illinois Central-Soo system
Georgia:								
Atlanta	X	X						X
Savannah	X	X						X
Florida, Jacksonville	X	X						
Alabama, Birmingham	X	X	X					X
Tennessee:								
Memphis	X	X	X			X	X	X
Nashville	X							
Knoxville	X	X						
Louisiana, New Orleans	X	X				X	X	X
Wisconsin, Milwaukee			X		X			X
Minnesota:								
Minneapolis			X	X	X		X	X
St. Paul			X	X	X		X	X
Duluth			X	X	X			X
Washington:								
Seattle			X	X	X			
Spokane			X	X	X			
Tacoma			X	X	X			
Oregon, Portland			X	X	X		X	
Nebraska, Omaha			X	X	X	X	X	X
Iowa, Des Moines			X	X	X		X	X
Missouri:								
St. Louis	X	X	X	X	X	X	X	X
Kansas City			X	X	X	X	X	
St. Joseph				X	X	X	X	
Kansas, Kansas City			X		X	X	X	
Colorado, Denver				X	X	X	X	
Utah, Salt Lake				X	X			
California:								
Los Angeles					X	X	X	
San Francisco				X	X	X	X	
Oakland				X	X	X	X	
Texas:								
San Antonio					X	X	X	
Dallas				X	X	X	X	
Houston				X	X	X	X	
Fort Worth			X	X	X	X	X	
El Paso						X	X	
Oklahoma, Oklahoma City					X	X	X	
District of Columbia, Washington	X	X						
Ohio, Cincinnati	X	X						
Indiana:								
Indianapolis	X	X						X
Evansville	X	X				X	X	X
Illinois:								
Chicago	X	X	X	X	X	X	X	X
Peoria			X	X	X		X	X
Kentucky, Louisville	X	X						X
Virginia:								
Richmond	X	X						
Norfolk	X	X						

A Brief Description of Systems

EASTERN SYSTEMS

1. *New York Central system.*—The Central Railroad of New Jersey is the only addition of importance with the exception of the joint control of the New England roads which is to be shared in common with three of the other Eastern systems.

This grouping would give the New York Central a share of the anthracite coal business of the country and make a better distribution of such business among the Eastern systems.

The main line of the Central Railroad of New Jersey extends from Jersey City to Tamaqua. With trackage rights of about 40 miles from Tamaqua to Newberry Junction, direction connection would be made with existing lines of the New York Central extending from that point to Ashtabula.

With the Central Railroad of New Jersey a part of the New York Central system, much of the traffic to and from Pittsburgh, Cleveland, and points farther west could naturally be diverted from the main line of the system, for this line would be more direct and would pass through a less congested territory.

It is probable that in the future development of the New York Central system to meet the demands for increased service, capital expended upon this property would result in a greater increase of capacity than if similarly expended on the main lines of the system passing through New York State.

2. *Buffalo system.*—The grouping of these roads has been made with a view to developing a system with advantages equal to those of the New York Central and the Pennsylvania systems which would be strong competitors.

The Delaware & Hudson connecting with the northern New England lines, and the Erie with the southern New England lines, would make the system a strong competitor for business to and from New England.

The Delaware, Lackawanna & Western and the New York, Chicago & St. Louis, together with the main line of the Erie, would provide a system with two routes from New York and New England points to Chicago.

The Wabash lines East of the Mississippi River would give the system an entrance into St. Louis.

The Buffalo, Rochester & Pittsburgh, the Bessemer & Lake Erie, and the Wheeling & Lake Erie would give it an opportunity to obtain its fair share of the business originating in the Pittsburgh district.

The Pere Marquette would make it a competitor for Michigan business.

3. *Pennsylvania system.*—The Pennsylvania system remains practically intact with the exception of sharing with other systems in the joint control of the New England roads.

4. *Baltimore-Reading system.*—This system with its principal terminals in Philadelphia, Baltimore, and Washington would be more largely a competitor of the Pennsylvania Railroad from these points to the West.

The Western Maryland would supplement the lines of the Baltimore & Ohio in providing additional facilities in and about Baltimore.

With a joint interest in the New England roads and with terminals in New York, the system would be in position to compete for western business, but less advantageously than the other three systems because of its less direct lines and also because of the topography of the country through which it passes.

By the addition of the Lehigh Valley it would reach Buffalo and the Lakes. An outlet to Chicago could be had by traffic relations with the Grand Trunk.

The Lehigh Valley also would furnish an entrance from Allentown to New York.

5. *Norfolk & Western-Chesapeake & Ohio system.*—The Virginian Railway is included in this system.

As the character of the business of these roads is so similar, and as there is so little diversity in the tonnage, greater economy of operation would probably be realized and duplication of investment avoided by a common ownership of these properties. They have, therefore, been grouped together in a single system and competition eliminated.

The lines already owned or controlled by the Chesapeake & Ohio would provide an entrance into Chicago and Toledo for the remaining roads in the group.

Joint control of New England system.—One of the important features of the grouping of the eastern roads is the provision for the joint control of the New England railroads by the four principal eastern systems, all of which reach the New England gateways. In the effort to combine the railroads of the country into a single national transportation system to meet the requirements of the transportation act, each road as a part of the system must be considered in its relation to the whole. The disposition to be made of the New England roads, accordingly, must be determined by the service required of them as an integral part of such a system.

The act calls for the division of the country into transportation districts; it provides that all roads in each district shall be grouped into systems in such a way as to "preserve competition as fully as possible"; to "maintain existing routes and channels of trade and commerce wherever practicable," and to assure facilities adequate to meet all the requirements of each district. The joint control of the New England roads by the four proposed systems provides the only means of serving all of these purposes.

Because of their location, the New England roads, neither individually nor as a whole, can compete with any other system in the district. The serveral New England roads at the present time have practically a monopoly of transportation in the territory which they serve, and without disintegrating existing systems they can not compete even with each other to any appreciable extent. The only way that the New England roads can serve a competitive purpose is through their relationship to and as parts of outside systems which compete for New England business.

The division of the New England roads among the various trunk lines (for example, assigning the Boston & Maine to the proposed New York Central system or the Buffalo system; or the New York, New Haven & Hartford to the Pennsylvania system or the Baltimore-Reading system) would greatly restrict if not entirely eliminate competition and create a monopoly in the respective parts of New England. To preserve and to promote competition to the fullest extent among the roads in the eastern district west of the Hudson River, with which traffic is interchanged, as well as to maintain the existing routes and channels of trade and commerce, which these roads offer, a common use of all railroad facilities within New England must be preserved for all these systems without discrimination. While the joint ownership or control of the New England lines is not essential in order to maintain the common use of these facilities, so far as competition is concerned, it is essential, nevertheless, to assure facilities adequate to meet the transportation requirements of the district of which they are a part, for sound credit is necessary to maintain adequate facilities, and sufficiency and stability of income are equally necessary to maintain sound credit.

The difficulty of obtaining the full compensation for service in connection with interchanged traffic, as well as the high operating costs, due to location are both factors of importance which adversely affect the income and credit standing of the New England roads. Nearly 65 per cent of the tonnage handled by these roads is interchanged at the gateways with connecting lines, and the compensation for service, both for traffic originating in New England for points outside, as well as that originating outside for destination in New England, is to a considerable extent determined by negotiations with the roads which share in the business.

The number of roads involved, the variety of the tonnage interchanged, the differences in the length of haul, and countless other factors make a satisfactory determination of the fair division of the compensation received from this traffic a problem so complex as to be impossible. To what extent the income of the New England roads falls short of an amount sufficient to provide a fair return on their property values, because of unsatisfactory division of joint rates, and to what extent this shortage is due to other factors, it is impossible to say; nor would it be a matter of consequence if there were a common ownership of these properties by all the remaining roads in the same rate-making district, for by the provisions of the transportation act it is not essential that all parts of each system, if commonly owned, should be equally self-sustaining, for rates are designed to meet the combined requirements of all systems in the district considered as a whole.

As the roads comprising these four systems are to include practically all the roads in the eastern district, except those in the Pocahontas district, these systems together will receive income above their requirements sufficient in large measure to offset the shortage of income on the part of the New England roads whether it is due to unsatisfactory compensation for handling joint business or higher operating costs due to location. With income sufficient for the system as a whole, it is obvious that the deficit of one part fairly measures the excess accruing to the balance of the system. In a broad way, therefore, it is possible both to determine the extent to which the systems in the eastern district as a whole outside of New England profit by the rates made for the benefit of the New England roads, and to estimate the profit accruing to each system, for it may be assumed that such profit is approximately in proportion to the whole as the ton miles or freight earnings of each system are to the total of the district.

The ownership and control of the New England roads by these systems—each participating in the ownership in proportion as it benefits by including the New England roads in the district for rate making purposes—would prove no burden to these systems, for the dividends on the additional stock, which it would be necessary to issue to acquire control, would be provided by the increased income received through rates, which are higher because of the inclusion of the factors of cost and property values of the New England roads in the determination of the rates for the whole.

Such a solution of the problem would be the most effective means of preserving and of promoting competition; of maintaining the existing routes of commerce; of providing the credit necessary to assure such facilities as would enable the New England roads to perform the service required of them, not only for New England but for the country at large.

This is not the place to discuss a detailed plan for the transfer of the control of New England roads to these systems. A brief statement will, however, show

99790—26——33

its practicability. First of all, it would be necessary to determine the equitable interest of each of the New England roads in a unified New England system, and to make such readjustments of capitalization as are necessary to establish substantial uniformity in the financial structures of each of the New England roads. The next step would be to form a holding company, whose stock would be used to acquire the stocks of the New England roads. These stocks could in turn be exchanged by the holding company for stocks of the four systems which are to participate in the joint ownership, the extent of participation of each system being determined largely by the benefit which it would receive by including the New England roads in the same rate-making district. As owners of the stocks of these four systems, the holding company would receive income with which to pay dividends to its own stockholders, the original holders of the New England railroad stocks.

This method of meeting the New England problem has been referred to as remote, inasmuch as the systems which are to purchase control exist only on paper and there is no assurance that the proposed consolidations will ever take place. Pending such consolidations a similar plan of ownership could become operative by dealing with the nine trunk line systems with which business is interchanged. The freight revenues of these nine systems are over 80 per cent of the total of the district, excluding the New England and Pocahontas districts. These roads are the principal ones concerned in the division of joint rates, and are also the largest beneficiaries of the higher rates which are made to cover the requirements of the New England roads. The exchange of stocks with these roads on the basis outlined would leave less than 20 per cent of the stocks of the New England roads in the treasury of the holding company unexchanged; this stock could be held until such time as the remaining roads in the district were absorbed by the various systems and then exchanged on a similar basis.

(The New England situation has been discussed previously on page 487 and again on page 490.)

SOUTHERN SYSTEMS

6. *Atlantic Coast Line-Louisville & Nashville system.*—The various roads in this system are already so closely related by stock ownership or by lease as to constitute a system which meets the requirements of the transportation act.

7. *Southern Railway system.*—The principal change in this system is the addition of the Seaboard Air Line.

The Seaboard Air Line covers much the same territory as the Atlantic Coast Line and would give the system access to Florida and additional coast ports which it would not otherwise reach.

WESTERN SYSTEMS

8. *Great Northern-St. Paul system.*—The St. Paul would furnish the Great Northern entrances into Chicago, Omaha, and Kansas City.

The Wabash lines west of the Mississippi River would give an entrance into St. Louis; the St. Louis & San Francisco would provide an outlet to the Southwest.

The joint control of the Chicago & Alton with the Union Pacific-Northwestern system would give a line from Kansas City to St. Louis and would also provide lines between the Southwest and Chicago and St. Louis.

This system would compete more especially with the Northern Pacific-Burlington system for Northwestern traffic, and will all systems from the Southwest to Chicago.

9. *Northern Pacific-Burlington system.*—The important additions are the Denver & Rio Grande, Western Pacific, Kansas City Southern, and Chicago Great Western.

The Denver & Rio Grande and the Western Pacific would provide an entrance to San Francisco and make the system a strong competitor of the Union Pacific for business to and from California.

The Kansas City Southern would give an outlet from Kansas City to the Gulf.

The Chicago Great Western would cover territory not now occupied and would furnish more direct lines from Minneapolis and St. Paul to Omaha and Kansas City, and also supplementary lines from St. Paul and Kansas City to Chicago.

The principal competitors of this system would be the Great Northern-St. Paul and the Union Pacific-Northwestern systems.

10. *Union Pacific-Northwestern system.*—The Chicago & Northwestern would give the Union Pacific a direct entrance from Omaha into Chicago and also would make it a competitor for Minnesota and Wisconsin business.

The addition of the Central Pacific would give it a direct line to San Francisco.

The Chicago & Alton would connect Kansas City with St. Louis and provide the system with an entrance into Chicago by way of St. Louis, both for its business from the West and from the Southwest, the territory which it would serve by the addition of the Missouri, Kansas & Texas.

This system would compete especially with the Northern Pacific-Burlington and Atchison systems.

11. *Atchison system.*—An entrance into New Orleans would be provided by the addition of the Texas & Pacific and make it a strong competitor with the Southern Pacific from New Orleans to the coast.

The addition of the Missouri Pacific system would make it an important factor in southwestern territory.

The Chicago & Eastern Illinois controlled jointly with the Southern Pacific system would provide a direct route from St. Louis to Chicago.

12. *Southern Pacific system.*—By the addition of the El Paso and Southwestern, the present Southern Pacific and Chicago, Rock Island & Pacific systems would provide a direct through system from Chicago to the coast.

By the addition of the St. Louis Southwestern and the joint control of the Chicago & Eastern Illinois it would be a competitor with other systems from the Southwest to St. Louis and Chicago.

The principal competitor would be the Atchison.

13. *Illinois Central-Soo system.*—This is a north and south system from the Canadian border to New Orleans.

The Minneapolis & St. Louis would provide direct connection between Minneapolis and St. Paul and Omaha.

With its line through Peoria, it would per traffic from these points to reach the Gulf without entrance into Chicago.

The discussions in this pamphlet have been concerned mainly with the importance of sound credit, and the suggested groupings of the roads have been developed among other things to insure the presence of this fundamental in each consolidated system. Other plans will be presented which will deal with essential factors viewed more especially from the standpoint of natural traffic relations and economy and efficiency of operation.

The transportation act provides first for a tenative plan of consolidations in order that all phases of the problem may be thoroughly considered as a basis for the formulation of a final plan. This pamphlet, therefore, will have accomplished its purpose if it contributes to a clearer understanding of the fundamental requirements of credit and if it leads to a fuller appreciation of the necessity of recognizing credit as a factor of first importance in the development of the plan which is finally adopted.

SUMMARY OF CONCLUSIONS

The development of this plan is based upon the conviction that private management will not endure unless it is successful in furnishing transportation adequate to the needs of the country; that this purpose will be fulfilled only provided each railroad system hereafter existing shall establish for itself a credit position which will enable it to obtain capital from the investment markets both readily and economically; that with the diversity of ownership of the various parts of the transportation system of the country as now constituted, the remedial legislation of the transportation act will provide satisfactory credit for systems which control only about 60 per cent of existing railroad facilities and will leave those which control the remaining 40 per cent in much the same position as before Federal control; that with a common interest in the ownership of all parts of the system the legislative provisions of the transportation act will provide sufficient credit for the entire system; that with a readjustment of ownership which will make systems covering the same territory, similar in essential respects, the same results will be obtained from a credit standpoint as though the entire system were commonly owned; that the readjustments of ownership necessary to secure similar systems can be brought about without seriously disturbing the relationships of ownership and control already existing, and without loss of credit standing on the part of any of the railroads involved; further, that competition offers greater assurance of economical and efficient service than a monopoly; and it is, therefore, compatible with the public interest that further consolidations be made which will create systems in each transportation district which are competitive as well as substantially uniform in their operating and financial characteristics.

The passage of the transportation act established private operation and management under public regulation as a part of the future railroad policy of the country. So far as a satisfactory system of regulation can be provided by

legislation, it has been provided by the provisions of the transportation act. Its successful application, however, requires that uniform results be obtained, and such results can not be obtained unless application be made to roads or systems operating under uniform conditions. Whether it will be necessary to establish such uniform conditions by compulsory consolidations, or resort to a monopoly with Government ownership, is a question for the future to determine. The adoption of one of these expedients appears to be certain, unless the necessary cooperation can be secured to bring about by voluntary action such consolidations as are required to make effective the regulatory provisions of the transportation act.

INDEX TO MAPS

Alphabetical list of all Class I roads

* Roads are not shown on the maps or included in the tables but they would, of course, be included in a complete plan for consolidating all roads into a limited number of strong, competing systems.
** Are to be joint-control roads shown on the maps but the figures are not included in the tables.
*** Joint-control roads shown on the maps and one-half of the figures are included in each system.
§ The Central Pacific has been placed with the Union Pacific, but the figures are included in those of the Southern Pacific.
§§ Wabash lines east of St. Louis are included in the Buffalo System; lines west of St. Louis in Great Northern-St. Paul System. Total figures are used in the Buffalo System.

NAME OF ROAD	Map No.
Alabama & Vicksburg	7
Alabama Great Southern	7
Ann Arbor	4
*Arizona & New Mexico	
Arizona Eastern	12
Atchison, Topeka & Santa Fe	11
Atlanta & West Point	6
*Atlanta, Birmingham & Atlantic	
Atlantic City	4
*Atlantic & St. Lawrence	
Atlantic Coast Line	6
Baltimore & Ohio	4
Baltimore, Chesapeake & Atlantic	3
**Bangor & Aroostook	1, 2, 3, 4
Bessemer & Lake Erie	2
*Bingham & Garfield	
**Boston & Maine	1, 2, 3, 4
Buffalo & Susquehanna	2
Buffalo, Rochester & Pittsburgh	2
*Canadian Pacific lines in Maine	
Carolina, Clinchfield & Ohio	5
**Central New England	1, 2, 3, 4
Central of Georgia	13
Central of New Jersey	1
§Central Pacific	10
*Central Vermont	
Charleston & West Carolina	6
Chesapeake & Ohio	5
***Chicago & Alton	8–10
***Chicago & Eastern Illinois	11–12
Chicago & Erie	2
Chicago & North Western	10
Chicago, Burlington & Quincy	9
*Chicago, Detroit & Canada Grand Trunk Junction	
Chicago Great Western	9
***Chicago, Indianapolis & Louisville	6–7
Chicago, Milwaukee & St. Paul	8
*Chicago, Peoria & St. Louis	
Chicago, Rock Island & Gulf	12
Chicago, Rock Island & Pacific	12
Chicago, St. Paul, Minneapolis & Omaha	10
*Chicago, Terre Haute & Southeastern	
Cincinnati, Indianapolis & Western	4
Cincinnati, New Orleans & Texas Pacific	7
Cincinnati Northern	1
Cleveland, Cincinnati, Chicago & St. Louis	1
Coal & Coke	4

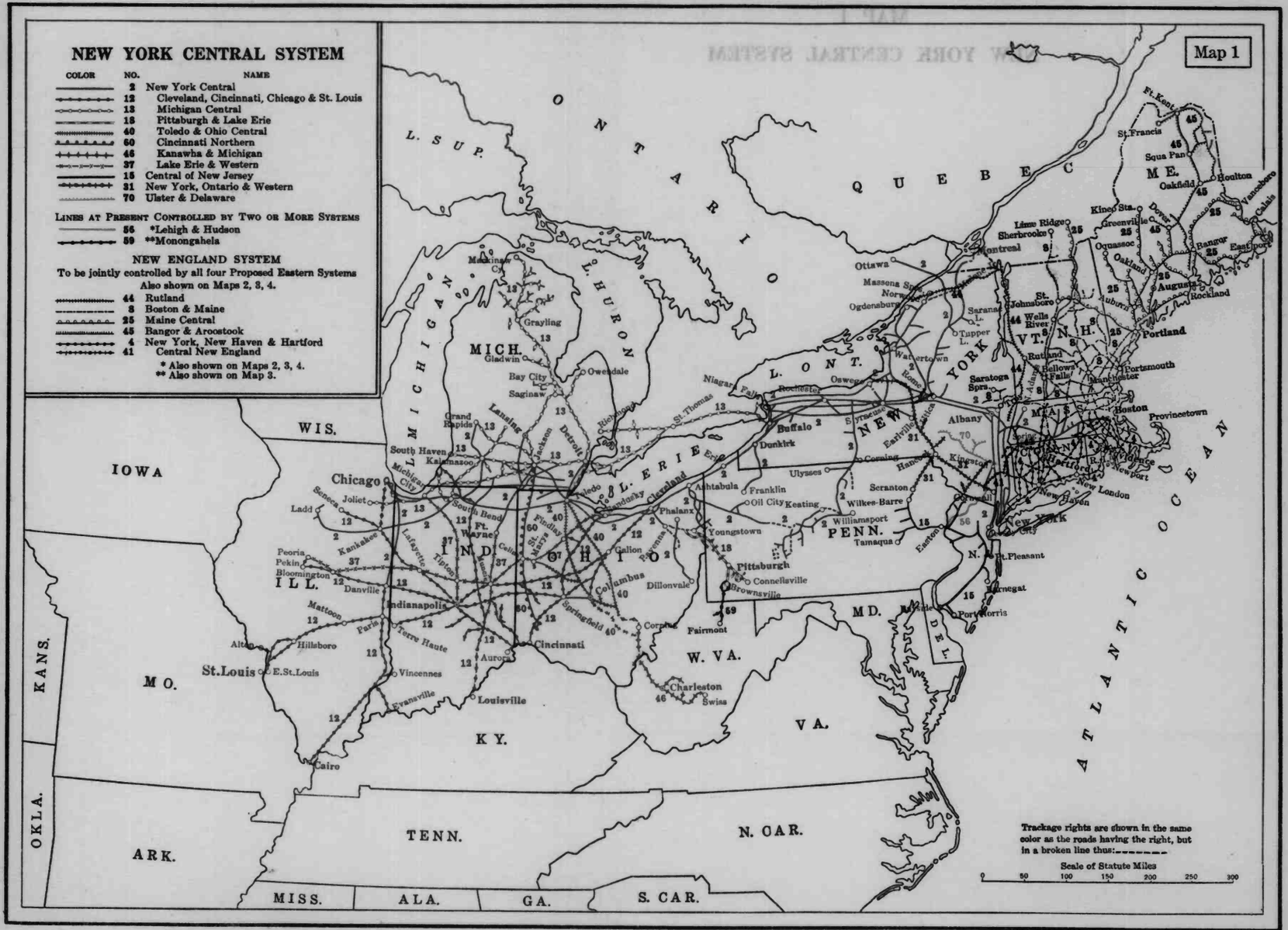
NAME OF ROAD—continued	Map No.
Colorado Southern	9
*Colorado & Wyoming	
Colorado Midland	9
*Cripple Creek & Colorado Springs	
Cumberland Valley	3
Delaware & Hudson	2
Delaware, Lackawanna & Western	2
Denver & Rio Grande	9
*Denver & Salt Lake	
*Detroit & Mackinac	
*Detroit & Toledo Shore Line	
*Detroit, Grand Haven & Milwaukee	
*Detroit, Toledo & Ironton	
Duluth & Iron Range	8
Duluth, Missabe & Northern	8
Duluth, South Shore & Atlantic	13
*Duluth, Winnipeg & Pacific	
El Paso & Southwestern	12
Elgin, Joliet & Eastern	2
Erie	2
Florida East Coast	7
Fort Worth & Denver City	9
Galveston, Harrisbirg & San Antonio	12
Georgia Railroad, Lessee	6
Georgia Southern & Florida	7
Grand Rapids & Indiana	3
*Grand Trunk Western	
Great Northern	8
*Gulf & Ship Island	
Gulf, Colorado & Sante Fe	11
*Gulf, Mobile & Northern	
Hocking Valley	5
Houston & Texas Central	12
Houston East & West Texas	12
Illinois Central	13
International & Great Northern	11
Kanawha & Michigan	1
Kansas City, Mexico & Orient	12
Kansas City Southern	9
Lake Erie & Western	1
**Lehigh & Hudson	1, 2, 3, 4
*Lehigh & New England	
Lehigh Valley	4
Long Island	3
Los Angeles & Salt Lake	10
*Louisiana & Arkansas	
*Louisiana Railway & Navigation	
Louisiana Western	12
Louisville & Nashville	6
Louisville, Henderson & St. Louis	6
**Maine Central	1, 2, 3, 4
Michigan Central	1
*Midland Valley	
Mineral Range	13
Minneapolis & St. Louis	13
Minneapolis, St. Louis & Sault Ste. Marie	13
*Missouri & North Arkansas	
Missouri, Kansas & Texas	10
Missouri, Kansas & Texas of Texas (included in Missouri, Kansas & Texas)	10
*Missouri, Oklahoma & Gulf	
Missouri Pacific	11
Mobile & Ohio	7
**Monongahela	1, 3
Morgan's Louisiana & Texas R. R. & Steamship Co	12
Nashville, Chattanooga & St. Louis	6

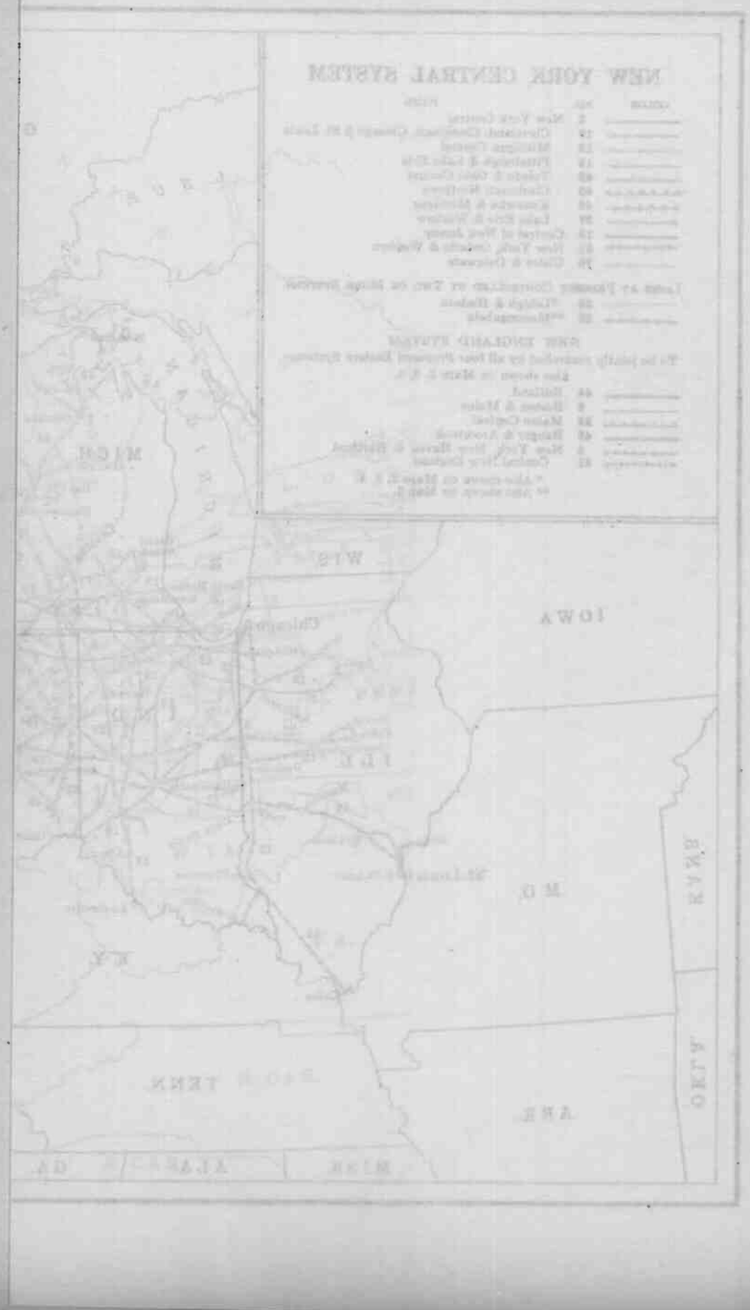
NAME OF ROAD—continued	Map No.
*Nevada Northern	
New Orleans & Northeastern	7
*New Orleans Great Northern	
New Orleans, Texas & Mexico	11
New York Central	1
New York, Chicago & St. Louis	2
**New York, New Haven & Hartford	1, 2, 3, 4
New York, Ontario & Western	1
New York, Philadelphia & Norfolk	3
New York, Susquehanna & Western	2
Norfolk & Western	5
*Norfolk Southern	
Northern Pacific	9
Northwestern Pacific	11
Oregon Short Line	10
Oregon-Washington R. R. & Navigation	10
Panhandle & Santa Fe	11
Pennsylvania Company	3
Pennsylvania Railroad	3
Pere Marquette	2
Philadelphia & Reading	4
Philadelphia, Baltimore & Washington	3
Pittsburgh & Lake Erie	1
Pittsburgh & West Virginia	2
Pittsburgh, Cincinnati, Chicago & St. Louis	3
*Pittsburgh, Shawmut & Northern	
Port Reading	4
**Richmond, Fredericksburg & Potomac	3, 4, 5, 6, 7
**Rutland	1, 2, 3, 4
St. Joseph & Grand Island	10
St. Louis, Brownsville & Mexico	11
St. Louis, Iron Mountain & Southern	11
St. Louis-San Francisco	8
St. Louis, San Francisco & Texas	8
St. Louis Southwestern	12
St. Louis Southwestern of Texas	12
San Antonio & Aransas Pass	12
Seaboard	7
Southern	7
Southern Railway in Mississippi	7
§Southern Pacific	12
*Spokane International	
***Spokane, Portland & Seattle	8, 9
Staten Island Rapid Transit	4
*Tennessee Central	
Texarkana & Fort Smith (included in Kansas City Southern)	9
Texas & New Orleans	12
Texas & Pacific	11
Toledo & Ohio Central	1
Toledo, Peoria & Western	3
Toledo, St. Louis & Western	4
Trinity & Brazos Valley	9
Ulster & Delaware	1
§Union Pacific	10
Vicksburg, Shreveport & Pacific	7
Virginian	5
§§Wabash	2, 8
**Washington Southern	3, 4, 5, 6, 7
West Jersey & Seashore	3
Western Maryland	4
Western Pacific	9
**Western Railway of Alabama	6, 13
Wheeling & Lake Erie	2
Wichita Falls & Northwestern (included in Missouri, Kansas & Texas)	10
Wichita Valley	9
Yazoo & Mississippi Valley	13

○

MAP 1

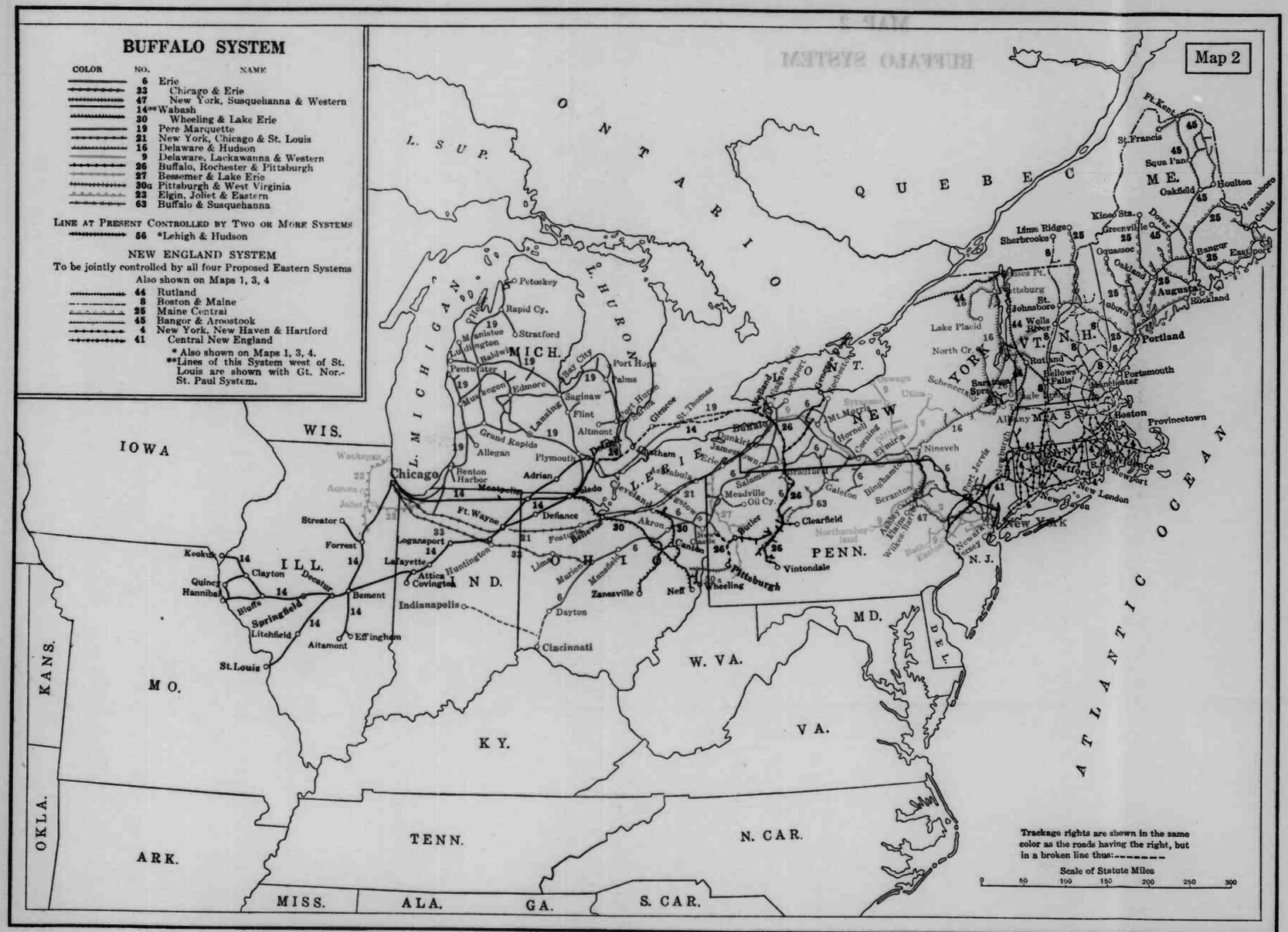
NEW YORK CENTRAL SYSTEM

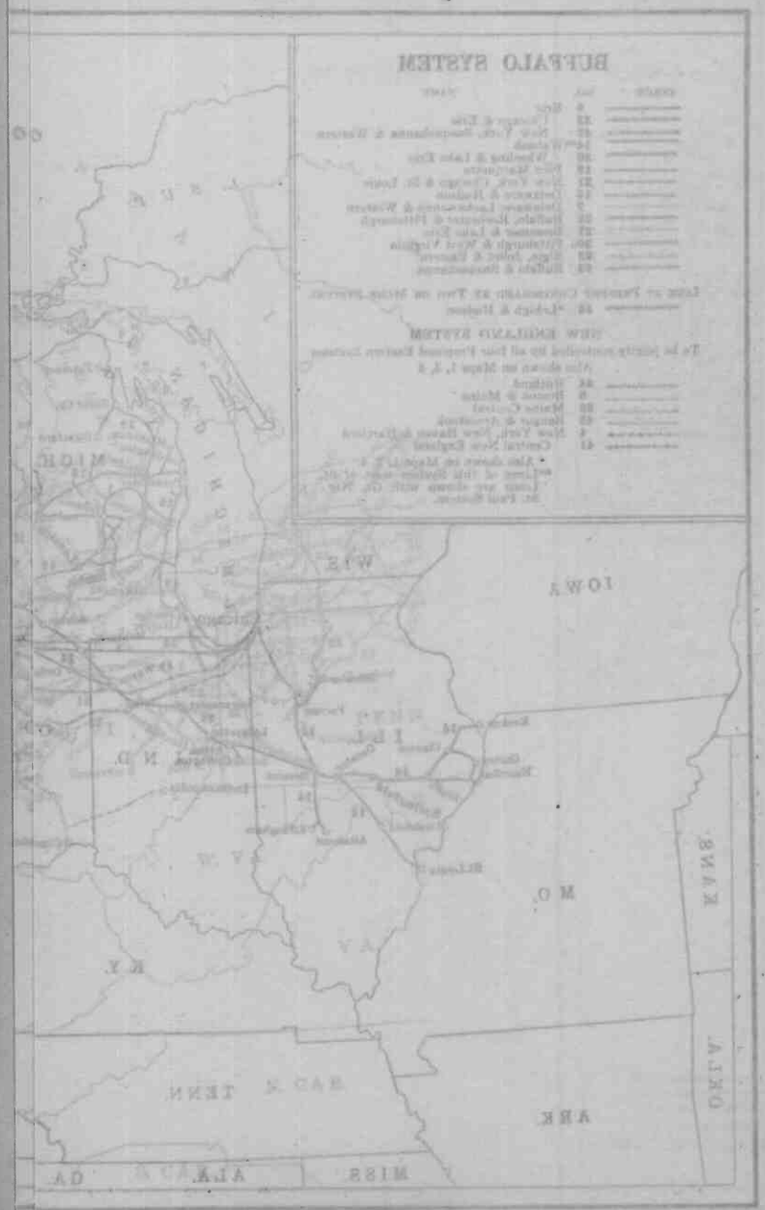

NEW YORK CENTRAL SYSTEM
COLOR NO. NAME
2 New York Central
12 Cleveland, Cincinnati, Chicago & St. Louis
13 Michigan Central
18 Pittsburgh & Lake Erie
40 Toledo & Ohio Central
60 Cincinnati Northern
46 Kanawha & Michigan
37 Lake Erie & Western
15 Central of New Jersey
31 New York, Ontario & Western
70 Ulster & Delaware
LINES AT PRESENT CONTROLLED BY TWO OR MORE SYSTEMS
56 *Lehigh & Hudson
59 **Monongahela
NEW ENGLAND SYSTEM
To be jointly controlled by all four Proposed Eastern Systems
Also shown on Maps 2, 3, 4.
44 Rutland
8 Boston & Maine
25 Maine Central
45 Bangor & Aroostook
4 New York, New Haven & Hartford
41 Central New England
* Also shown on Maps 2, 3, 4.
** Also shown on Map 3.
Map 1
ONTARIO
QUEBEC
L. SUP.
L. HURON
MICHIGAN
L. ERIE
L. ONT.
ATLANTIC OCEAN
MICH.
IND.
OHIO
ILL.
PENN.
N. Y.
VT.
N. H.
ME.
MASS.
R. I.
CONN.
N. J.
MD.
DEL.
W. VA.
VA.
KY.
TENN.
N. CAR.
S. CAR.
GA.
ALA.
MISS.
ARK.
MO.
IOWA
WIS.
ILL.
KANS.
OKLA.
Chicago
Cincinnati
Indianapolis
Louisville
St. Louis
Cairo
Buffalo
Albany
Boston
New York
Pittsburgh
Trackage rights are shown in the same color as the roads having the right, but in a broken line thus:- - - - - -
Scale of Statute Miles
0 50 100 150 200 250 300



MAP 2

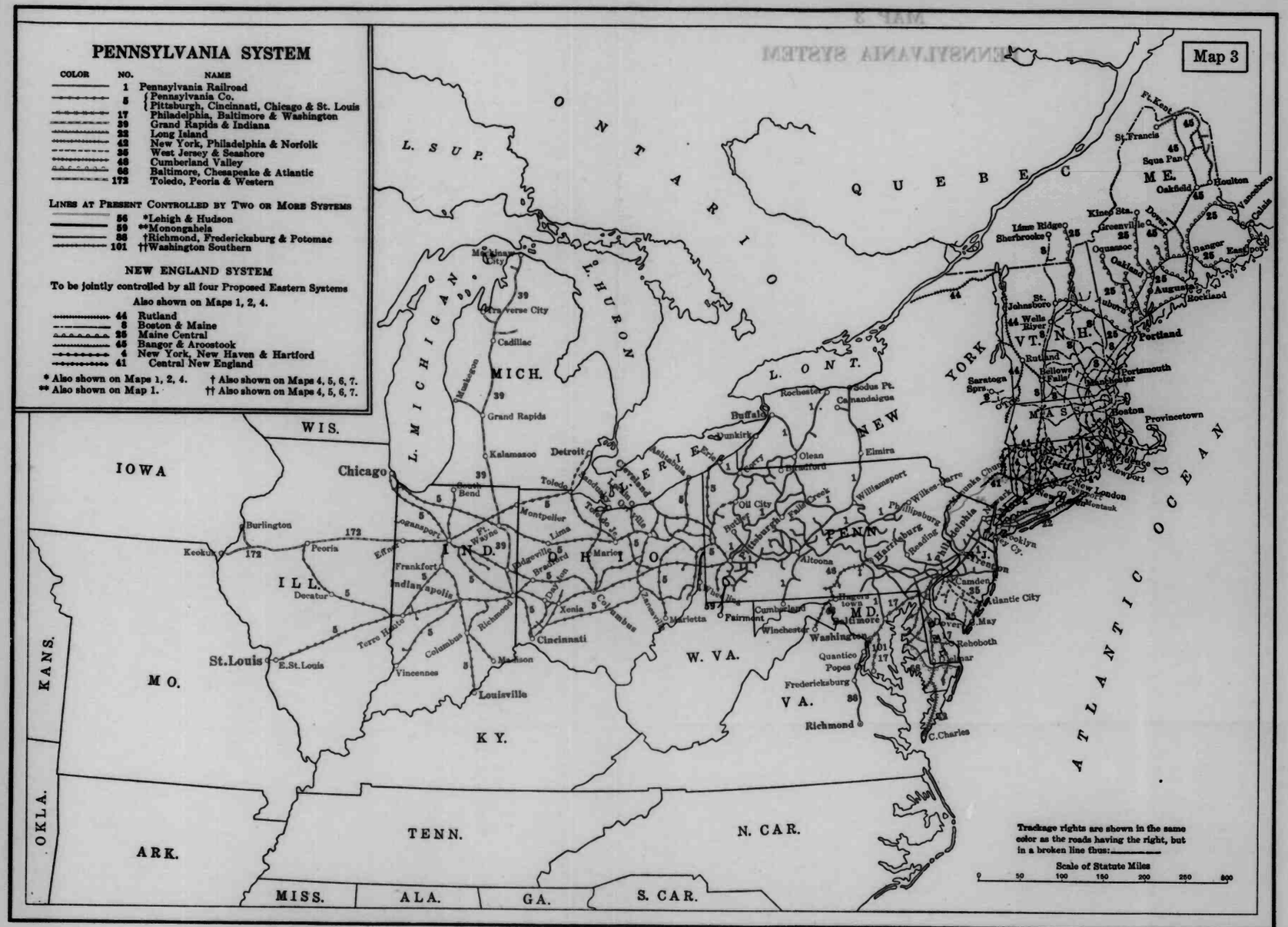
BUFFALO SYSTEM

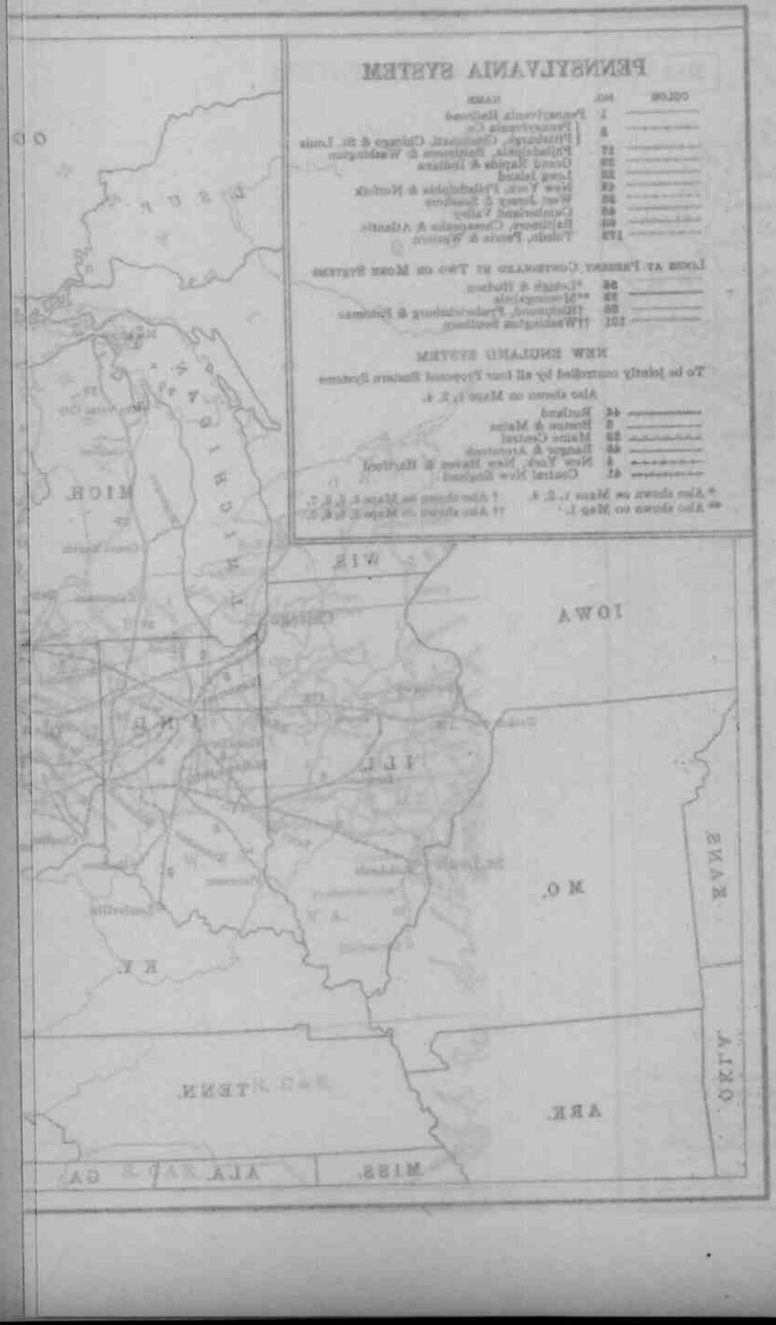

BUFFALO SYSTEM
COLOR NO. NAME
6 Erie
33 Chicago & Erie
47 New York, Susquehanna & Western
14** Wabash
30 Wheeling & Lake Erie
19 Pere Marquette
21 New York, Chicago & St. Louis
16 Delaware & Hudson
9 Delaware, Lackawanna & Western
26 Buffalo, Rochester & Pittsburgh
27 Bessemer & Lake Erie
30a Pittsburgh & West Virginia
23 Elgin, Joliet & Eastern
63 Buffalo & Susquehanna
LINE AT PRESENT CONTROLLED BY TWO OR MORE SYSTEMS
56 *Lehigh & Hudson
NEW ENGLAND SYSTEM
To be jointly controlled by all four Proposed Eastern Systems
Also shown on Maps 1, 3, 4
44 Rutland
8 Boston & Maine
25 Maine Central
45 Bangor & Aroostook
4 New York, New Haven & Hartford
41 Central New England
* Also shown on Maps 1, 3, 4.
**Lines of this System west of St. Louis are shown with Gt. Nor.-St. Paul System.
Map 2
Trackage rights are shown in the same color as the roads having the right, but in a broken line thus:--------
Scale of Statute Miles
0 50 100 150 200 250 300
ONTARIO
QUEBEC
L. SUP.
L. MICHIGAN
L. HURON
L. ERIE
ATLANTIC OCEAN
MICH.
WIS.
IOWA
ILL.
IND.
OHIO
PENN.
N. Y.
N. J.
MD.
DEL.
W. VA.
VA.
KY.
TENN.
N. CAR.
S. CAR.
GA.
ALA.
MISS.
ARK.
MO.
KANS.
OKLA.
ME.
VT.
N. H.
MASS.
R. I.
CONN.
Chicago
Detroit
Cleveland
Buffalo
Pittsburgh
Indianapolis
Cincinnati
St. Louis
New York
Boston
Portland
Montreal
Toronto
Albany
Rochester
Scranton
Wheeling
Columbus
Dayton
Toledo
Springfield
Peoria
Quebec



MAP 3

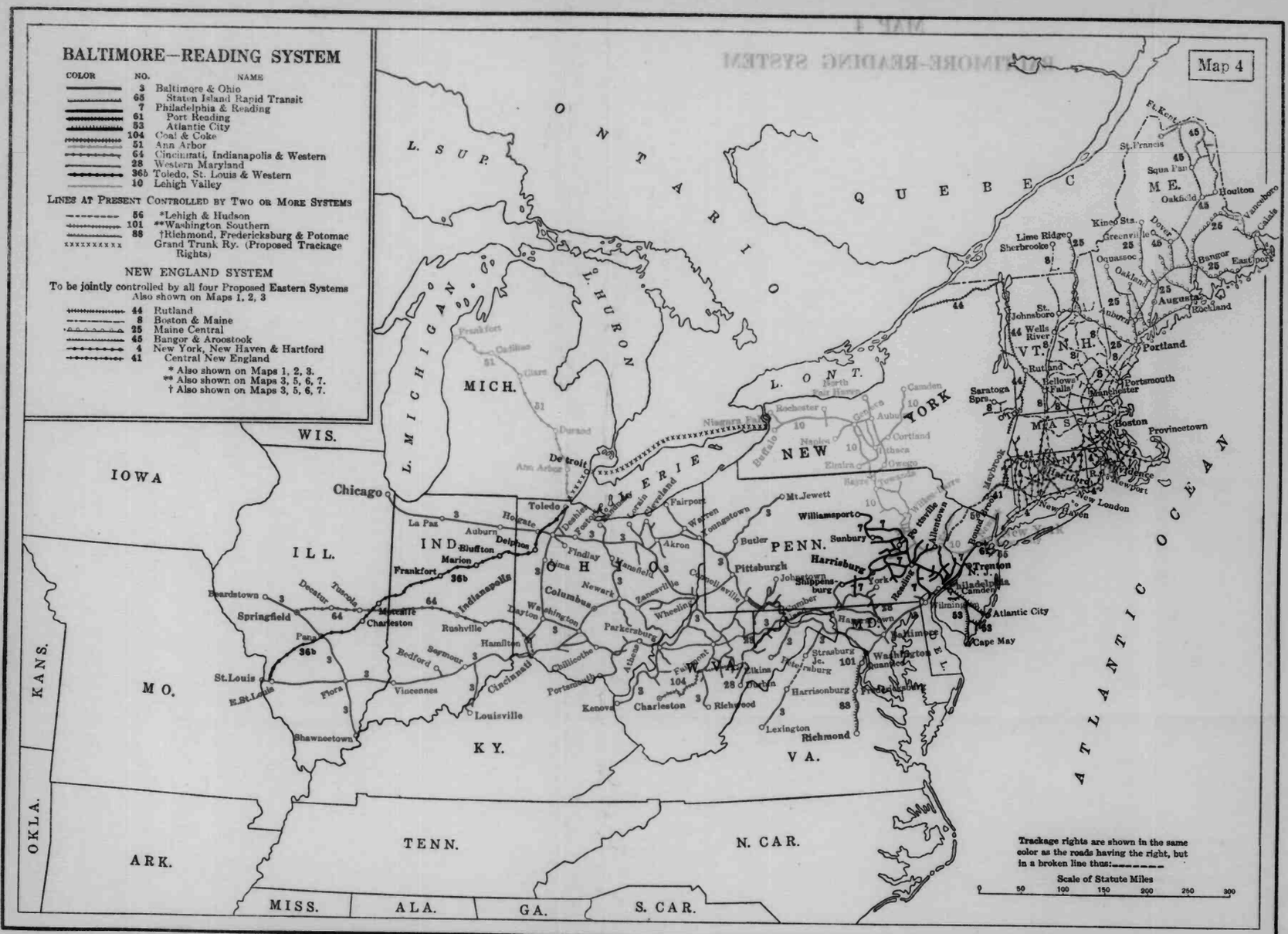
PENNSYLVANIA SYSTEM

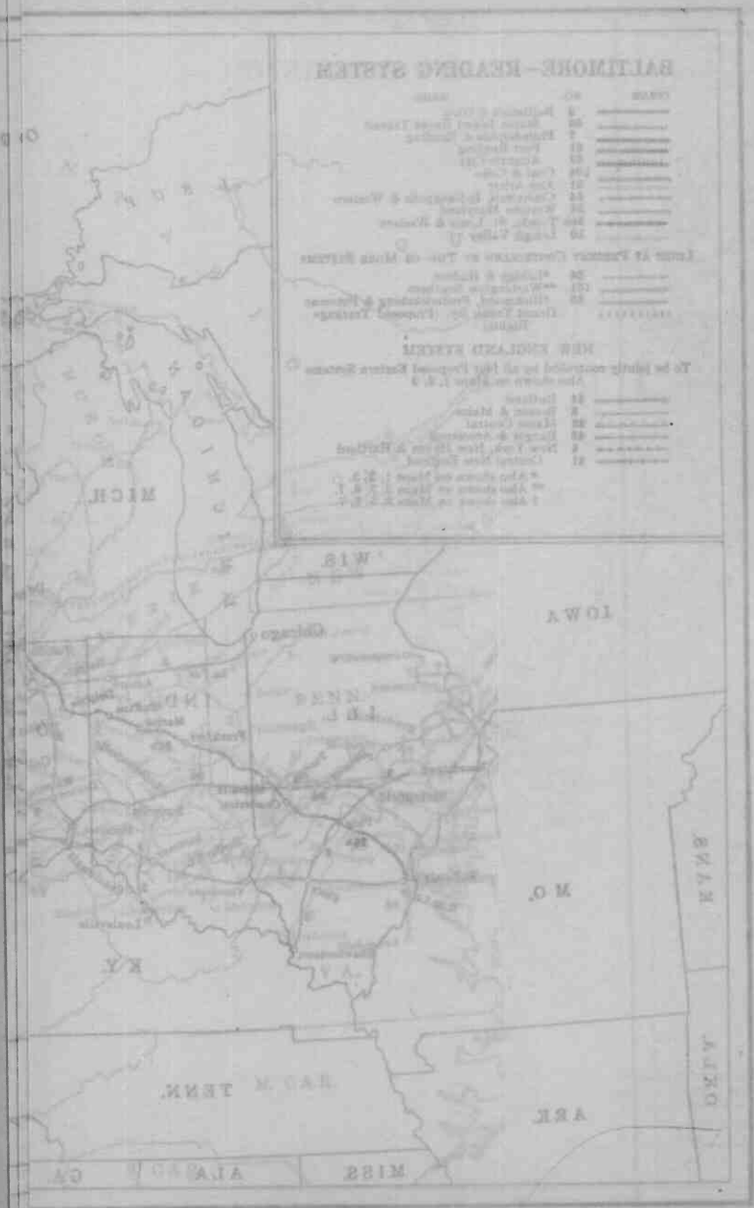

PENNSYLVANIA SYSTEM
COLOR NO. NAME
1 Pennsylvania Railroad
5 Pennsylvania Co.
5 Pittsburgh, Cincinnati, Chicago & St. Louis
17 Philadelphia, Baltimore & Washington
39 Grand Rapids & Indiana
32 Long Island
43 New York, Philadelphia & Norfolk
35 West Jersey & Seashore
46 Cumberland Valley
66 Baltimore, Chesapeake & Atlantic
172 Toledo, Peoria & Western
LINES AT PRESENT CONTROLLED BY TWO OR MORE SYSTEMS
56 *Lehigh & Hudson
59 **Monongahela
86 †Richmond, Fredericksburg & Potomac
101 ††Washington Southern
NEW ENGLAND SYSTEM
To be jointly controlled by all four Proposed Eastern Systems
Also shown on Maps 1, 2, 4.
44 Rutland
8 Boston & Maine
25 Maine Central
45 Bangor & Aroostook
4 New York, New Haven & Hartford
41 Central New England
* Also shown on Maps 1, 2, 4.
** Also shown on Map 1.
† Also shown on Maps 4, 5, 6, 7.
†† Also shown on Maps 4, 5, 6, 7.
Map 3
L. SUP.
ONTARIO
QUEBEC
L. HURON
L. MICHIGAN
L. ERIE
L. ONT.
ATLANTIC OCEAN
WIS.
IOWA
ILL.
IND.
OHIO
MICH.
PENN.
N. J.
MD.
W. VA.
VA.
KY.
TENN.
N. CAR.
S. CAR.
GA.
ALA.
MISS.
ARK.
OKLA.
KANS.
MO.
N. Y.
VT.
N. H.
ME.
MASS.
R. I.
CONN.
Chicago
Detroit
Cleveland
Buffalo
Rochester
Toledo
Cincinnati
St. Louis
Louisville
Indianapolis
Columbus
Pittsburgh
Philadelphia
Baltimore
Washington
Richmond
Boston
Portland
Trackage rights are shown in the same color as the roads having the right, but in a broken line thus:
Scale of Statute Miles
0 50 100 150 200 250 300



MAP 4

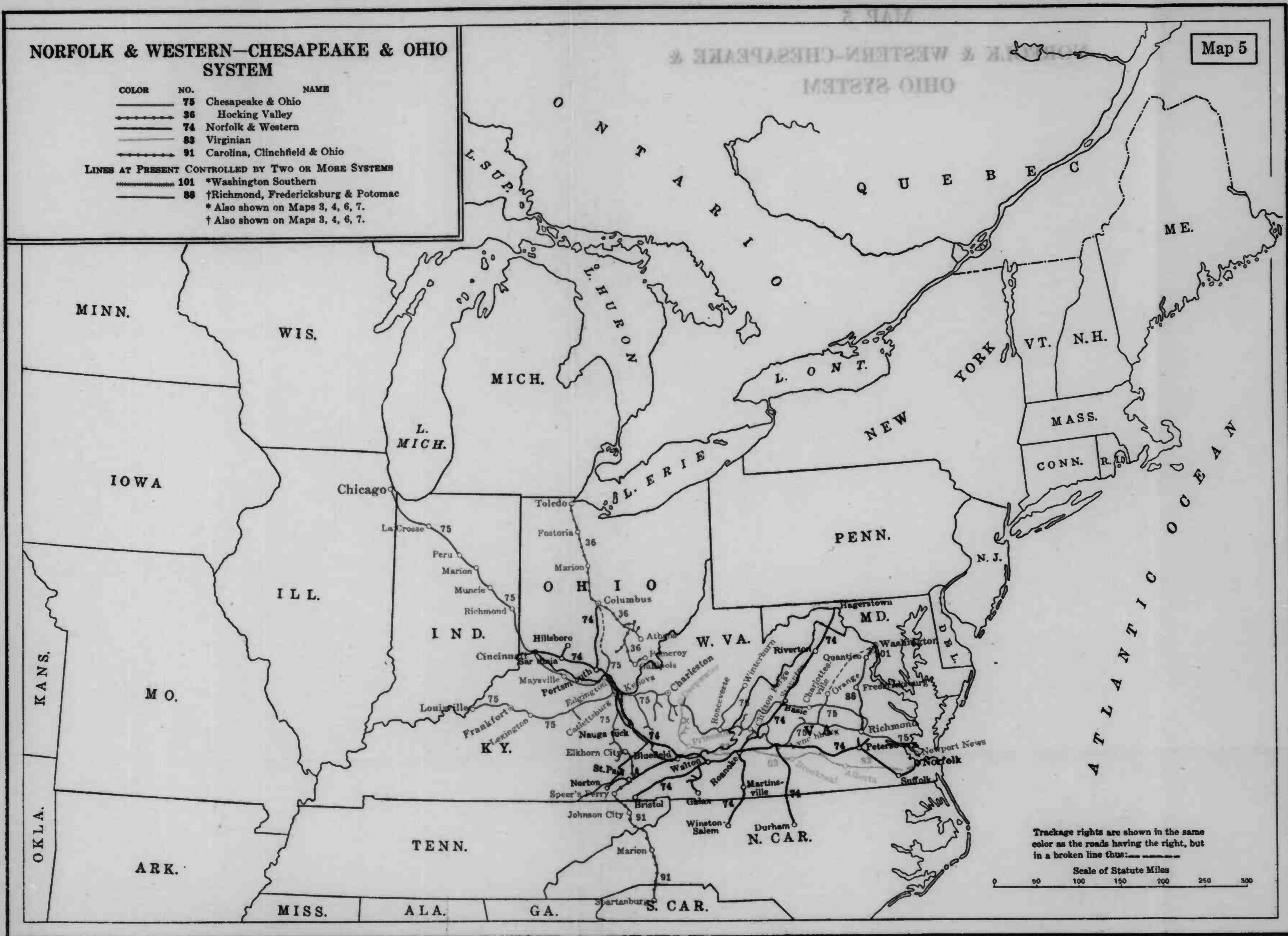
BALTIMORE–READING SYSTEM


BALTIMORE—READING SYSTEM
COLOR
NO.
NAME
3 Baltimore & Ohio
65 Staten Island Rapid Transit
7 Philadelphia & Reading
61 Port Reading
53 Atlantic City
104 Coal & Coke
51 Ann Arbor
64 Cincinnati, Indianapolis & Western
28 Western Maryland
36b Toledo, St. Louis & Western
10 Lehigh Valley
LINES AT PRESENT CONTROLLED BY TWO OR MORE SYSTEMS
56 *Lehigh & Hudson
101 **Washington Southern
88 †Richmond, Fredericksburg & Potomac
Grand Trunk Ry. (Proposed Trackage Rights)
NEW ENGLAND SYSTEM
To be jointly controlled by all four Proposed Eastern Systems
Also shown on Maps 1, 2, 3
44 Rutland
8 Boston & Maine
25 Maine Central
45 Bangor & Aroostook
4 New York, New Haven & Hartford
41 Central New England
* Also shown on Maps 1, 2, 3.
** Also shown on Maps 3, 5, 6, 7.
† Also shown on Maps 3, 5, 6, 7.
Map 4
L. SUP.
ONTARIO
QUEBEC
L. HURON
L. MICHIGAN
L. ONT.
ERIE
MICH.
WIS.
IOWA
ILL.
IND.
OHIO
PENN.
NEW YORK
VT.
N. H.
MASS.
R. I.
CONN.
N. J.
ME.
Chicago
Detroit
Toledo
Cleveland
Buffalo
Pittsburgh
Harrisburg
Philadelphia
Boston
Portland
Springfield
Indianapolis
Columbus
Cincinnati
Louisville
St. Louis
Richmond
Baltimore
Washington
Atlantic City
Cape May
Provincetown
Trackage rights are shown in the same color as the roads having the right, but in a broken line thus:--------
Scale of Statute Miles
0 50 100 150 200 250 300
KANS.
MO.
OKLA.
ARK.
TENN.
KY.
W. VA.
VA.
N. CAR.
S. CAR.
GA.
ALA.
MISS.
ATLANTIC OCEAN

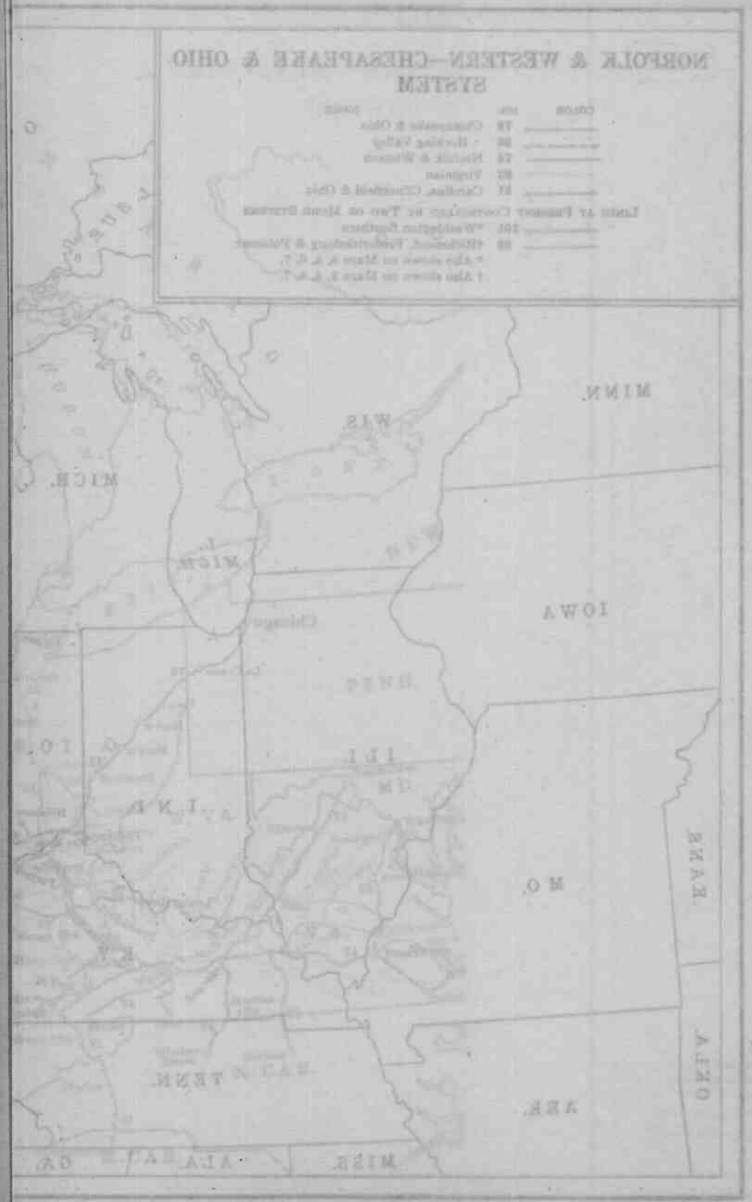


MAP 5

NORFOLK & WESTERN–CHESAPEAKE & OHIO SYSTEM

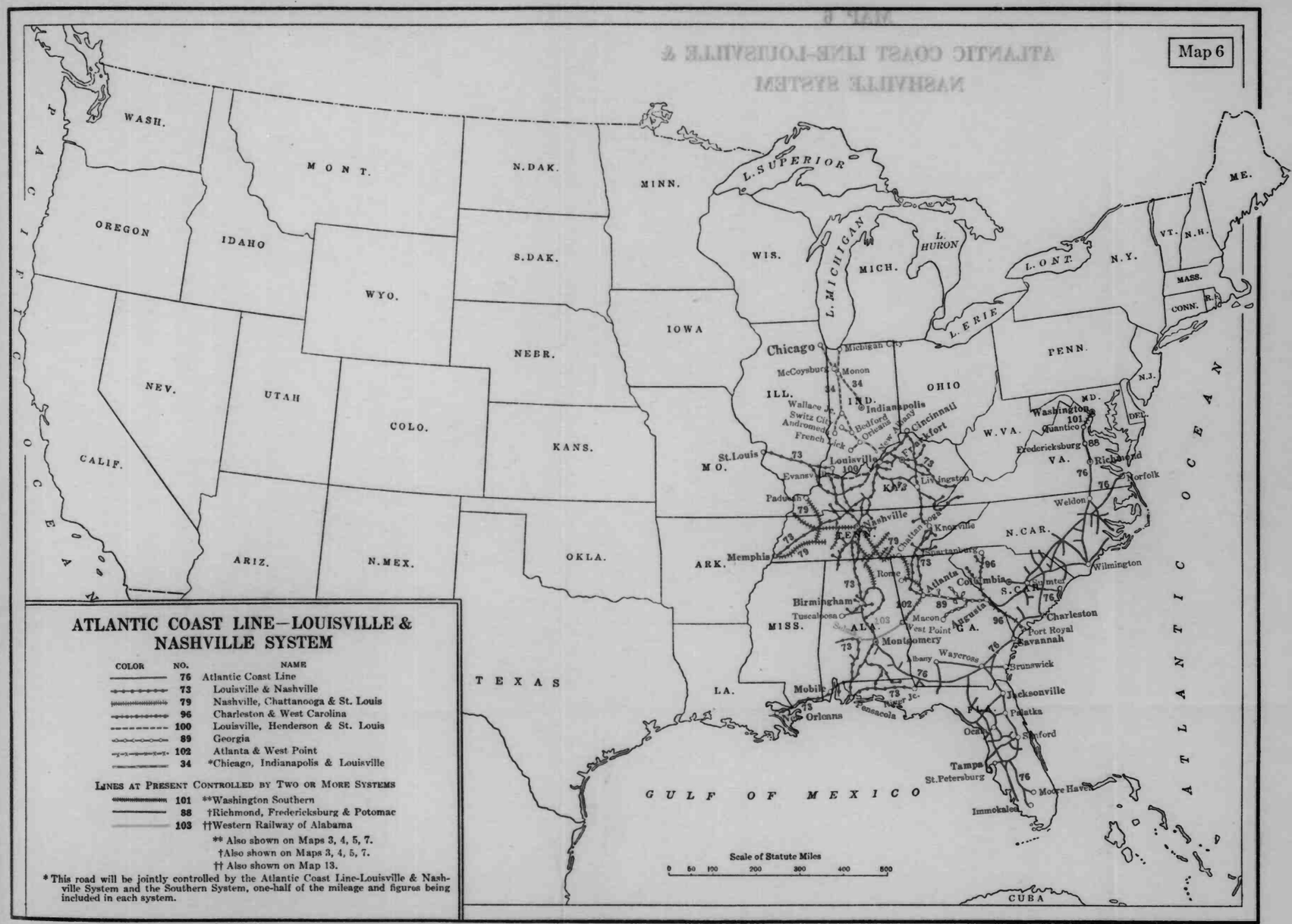


NORFOLK & WESTERN—CHESAPEAKE & OHIO SYSTEM
COLOR NO. NAME
75 Chesapeake & Ohio
36 Hocking Valley
74 Norfolk & Western
83 Virginian
91 Carolina, Clinchfield & Ohio
Lines at Present Controlled by Two or More Systems
101 *Washington Southern
88 †Richmond, Fredericksburg & Potomac
* Also shown on Maps 3, 4, 6, 7.
† Also shown on Maps 3, 4, 6, 7.
Map 5
ONTARIO
QUEBEC
L. SUP.
L. HURON
L. MICH.
L. ONT.
L. ERIE
MINN.
WIS.
MICH.
IOWA
ILL.
IND.
OHIO
PENN.
NEW YORK
VT.
N.H.
ME.
MASS.
CONN.
R.I.
N.J.
MD.
DEL.
W. VA.
KY.
MO.
KANS.
OKLA.
ARK.
TENN.
N. CAR.
S. CAR.
MISS.
ALA.
GA.
ATLANTIC OCEAN
Chicago
La Crosse
Peru
Marion
Muncie
Richmond
Toledo
Fostoria
Columbus
Athens
Pomeroy
Hillsboro
Cincinnati
Maysville
Portsmouth
Louisville
Frankfort
Lexington
Catlettsburg
Kenova
Charleston
Ronceverte
Winterburn
Riverton
Hagerstown
Washington
Quantico
Orange
Basic
Richmond
Petersburg
Newport News
Norfolk
Suffolk
Roanoke
Bluefield
Walton
Martinsville
Galax
Winston-Salem
Durham
Norton
St. Paul
Elkhorn City
Speer's Ferry
Bristol
Johnson City
Marion
Spartanburg
Trackage rights are shown in the same color as the roads having the right, but in a broken line thus:
Scale of Statute Miles
0 50 100 150 200 250 300



MAP 6

ATLANTIC COAST LINE–LOUISVILLE & NASHVILLE SYSTEM



ATLANTIC COAST LINE—LOUISVILLE & NASHVILLE SYSTEM

COLOR	NO.	NAME
	76	Atlantic Coast Line
	73	Louisville & Nashville
	79	Nashville, Chattanooga & St. Louis
	96	Charleston & West Carolina
	100	Louisville, Henderson & St. Louis
	89	Georgia
	102	Atlanta & West Point
	34	*Chicago, Indianapolis & Louisville

LINES AT PRESENT CONTROLLED BY TWO OR MORE SYSTEMS

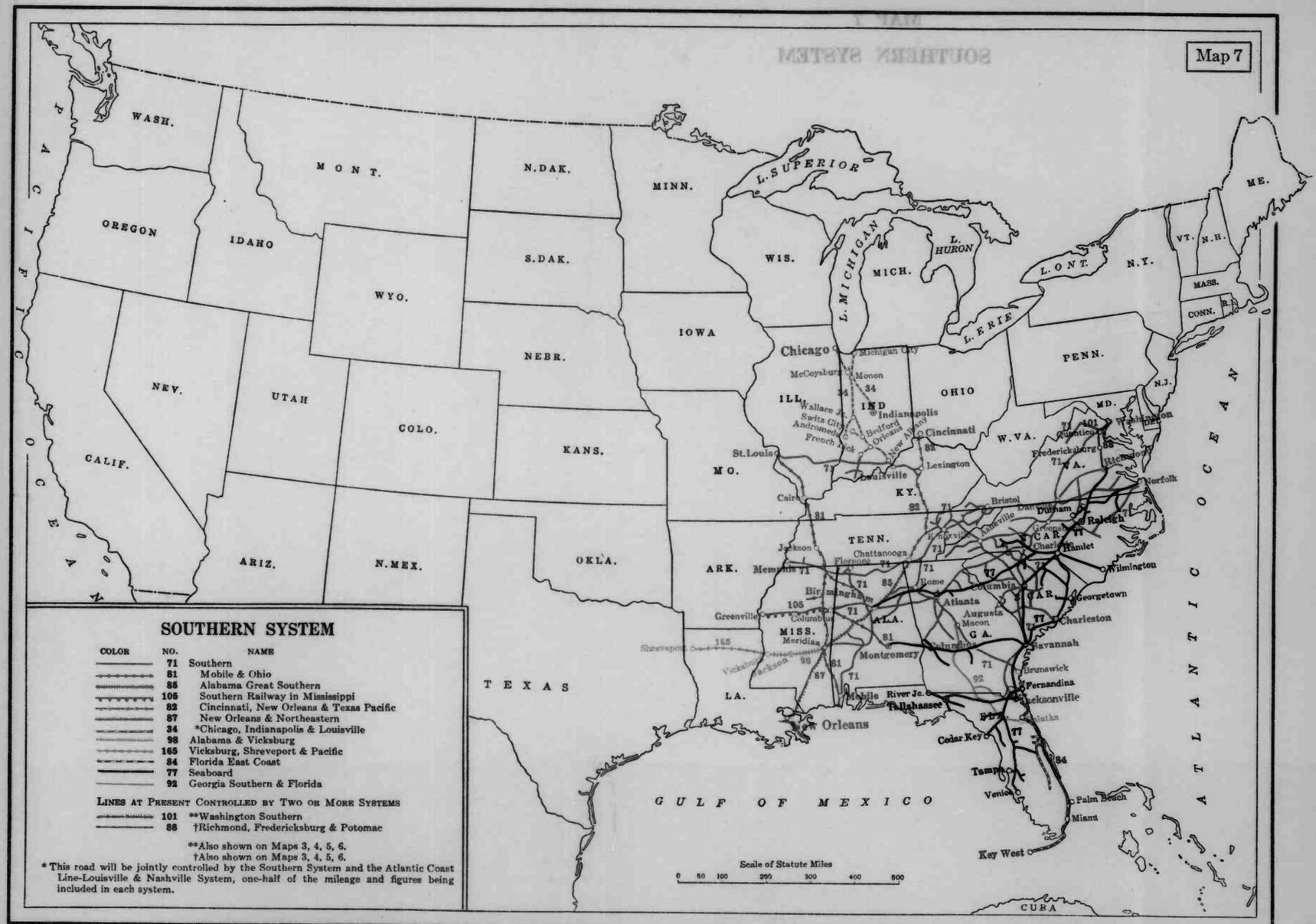
	101	**Washington Southern
	88	†Richmond, Fredericksburg & Potomac
	103	††Western Railway of Alabama

** Also shown on Maps 3, 4, 5, 7.
† Also shown on Maps 3, 4, 5, 7.
†† Also shown on Map 13.

* This road will be jointly controlled by the Atlantic Coast Line-Louisville & Nashville System and the Southern System, one-half of the mileage and figures being included in each system.

MAP 7

SOUTHERN SYSTEM



SOUTHERN SYSTEM

COLOR	NO.	NAME
	71	Southern
	81	Mobile & Ohio
	85	Alabama Great Southern
	105	Southern Railway in Mississippi
	82	Cincinnati, New Orleans & Texas Pacific
	87	New Orleans & Northeastern
	34	*Chicago, Indianapolis & Louisville
	98	Alabama & Vicksburg
	165	Vicksburg, Shreveport & Pacific
	84	Florida East Coast
	77	Seaboard
	92	Georgia Southern & Florida

LINES AT PRESENT CONTROLLED BY TWO OR MORE SYSTEMS

	101	**Washington Southern
	88	†Richmond, Fredericksburg & Potomac

**Also shown on Maps 3, 4, 5, 6.
†Also shown on Maps 3, 4, 5, 6.

* This road will be jointly controlled by the Southern System and the Atlantic Coast Line-Louisville & Nashville System, one-half of the mileage and figures being included in each system.

MAP 8

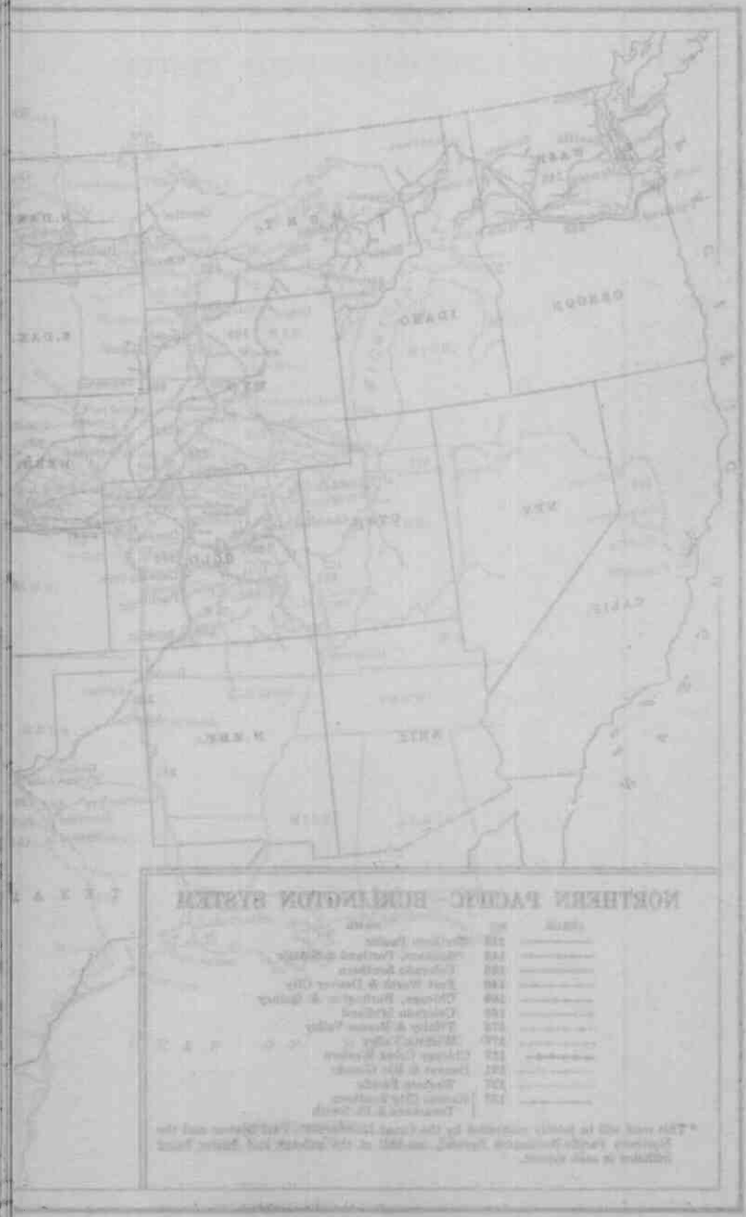
GREAT NORTHERN–ST. PAUL SYSTEM


Map 8
GREAT NORTHERN—ST. PAUL SYSTEM
COLOR
NO.
NAME
111 Great Northern
142 *Spokane, Portland & Seattle
108 Chicago, Milwaukee & St. Paul
14 †Wabash
129 Duluth, Missabe & Northern
138 Duluth & Iron Range
115 St. Louis-San Francisco
146 St. Louis, San Francisco & Texas
125**Chicago & Alton
* This road will be jointly controlled by the Great Northern-St. Paul System and the Northern Pacific-Burlington System, one-half of the mileage and figures being used in each system.
** This road will be jointly controlled by the Great Northern-St. Paul System and the Union Pacific-Northwestern System, one-half of the mileage and figures being included in each system.
† Lines of this system west of St. Louis.
Lines east of St. Louis and total figures are shown in the Buffalo System.
PACIFIC OCEAN
ATLANTIC OCEAN
GULF OF MEXICO
L. SUPERIOR
L. HURON
L. ERIE
L. ONT.
WASH.
OREGON
IDAHO
WYO.
NEV.
UTAH
COLO.
CALIF.
ARIZ.
N.MEX.
N.DAK
S.DAK.
NEBR.
KANS.
OKLA.
TEXAS
MINN.
IOWA
MO.
ARK.
LA.
WIS.
ILL.
MICH.
IND
OHIO
KY.
TENN.
MISS.
ALA.
GA.
FLA.
S.CAR.
N.CAR.
VA.
W.VA.
MD.
DEL.
N.J.
PENN.
N.Y.
VT.
N.H.
ME.
MASS.
CONN.
R.I.
CUBA
Vancouver
Nelson
Bellingham
Spokane
Portland
Fallbridge
Rexford
Shelby
Pacific Jc.
Glasgow
Great Falls
Helena
Butte
Lewistown
Miles Cy.
Terry
Billings
Minot
Devils Lake
Under Construction
Brandon
Winnipeg
Fargo
Crookston
St. Cloud
Hinckley
Hibbing Jct.
Duluth
Superior
Aberdeen
Mobridge
Mitchell
Rapid City
Granite Falls
Sioux Falls
Yankton
Sioux City
Mason City
Austin
Winona
La Crosse
Madison
Merrill
Green Bay
Menominee
Milwaukee
Racine
Chicago
Dubuque
Davenport
Rock Island
Cedar Rapids
Des Moines
Omaha
Council Bluffs
Ottumwa
Chillicothe
Moberly
Hannibal
Springfield
Kansas City
Jefferson City
St. Louis
Alton
Ellsworth
Ft. Scott
Maiden
Hoxie
Memphis
Muskogee
Birmingham
Quanah
Vernon
Sherman
Hugo
Hope
Ft. Worth
May
Menard
Scale of Statute Miles
0 50 100 200 300 400 500

MAP 9

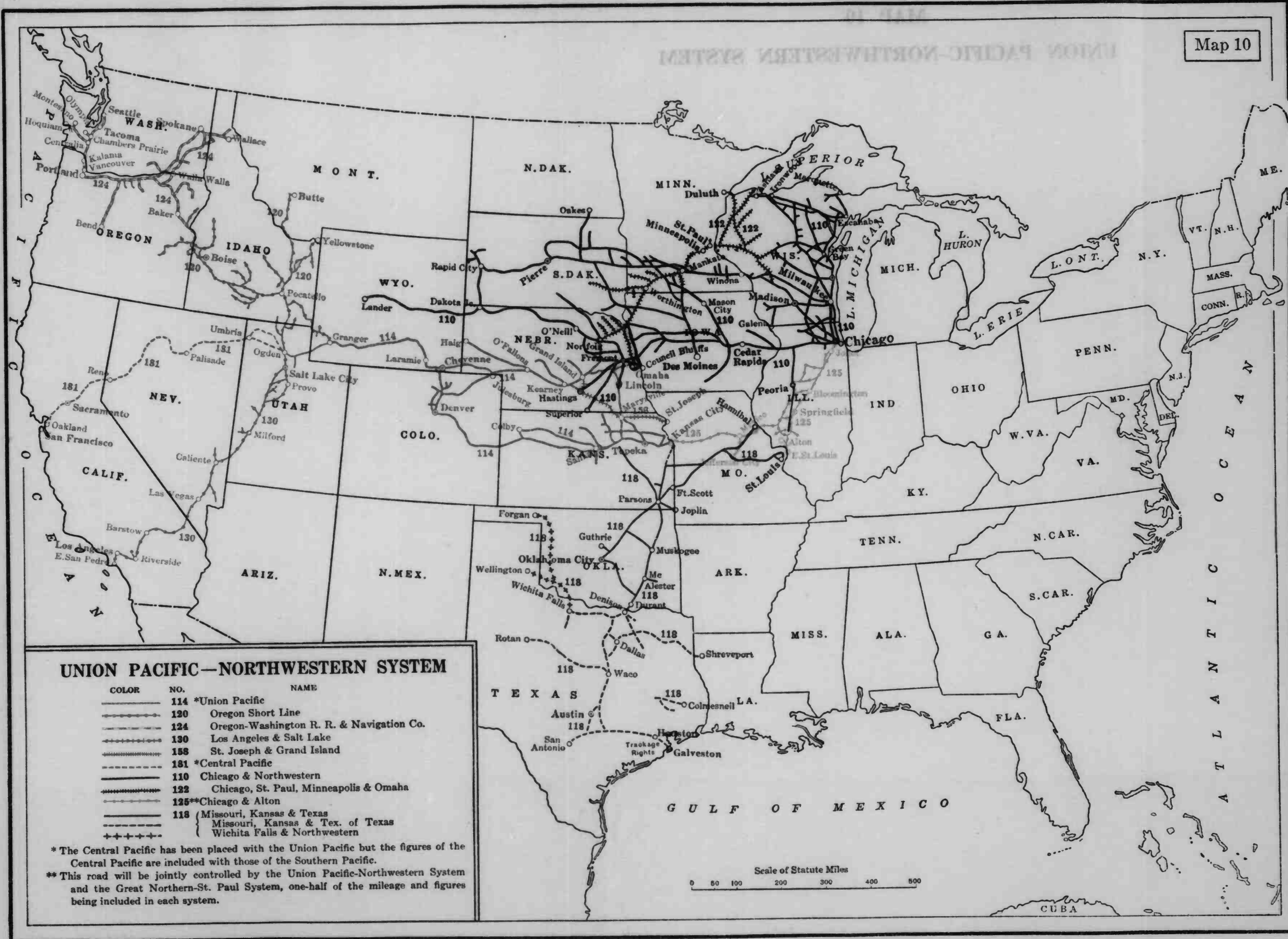
NORTHERN PACIFIC–BURLINGTON SYSTEM


Map 9
NORTHERN PACIFIC—BURLINGTON SYSTEM
COLOR NO. NAME
112 Northern Pacific
142 *Spokane, Portland & Seattle
135 Colorado Southern
140 Fort Worth & Denver City
109 Chicago, Burlington & Quincy
166 Colorado Midland
176 Trinity & Brazos Valley
177 Wichita Valley
127 Chicago Great Western
121 Denver & Rio Grande
137 Western Pacific
133 Kansas City Southern
Texarkana & Ft. Smith
* This road will be jointly controlled by the Great Northern-St. Paul System and the Northern Pacific-Burlington System, one-half of the mileage and figures being included in each system.
Scale of Statute Miles
0 50 100 200 300 400 500
PACIFIC OCEAN
ATLANTIC OCEAN
GULF OF MEXICO
CUBA
OREGON
IDAHO
MONT.
WASH.
WYO.
NEV.
UTAH
COLO.
CALIF.
ARIZ.
N.MEX.
N.DAK.
S.DAK.
NEBR.
KANS.
OKLA.
TEXAS
MINN.
IOWA
MO.
ARK.
LA.
WIS.
ILL.
MICH.
IND.
OHIO
KY.
TENN.
MISS.
ALA.
GA.
FLA.
S.CAR.
N.CAR.
VA.
W.VA.
PENN.
N.Y.
VT.
N.H.
MASS.
CONN.
R.I.
ME.
N.J.
MD.
DEL.
L. SUPERIOR
L. MICHIGAN
L. HURON
L. ERIE
L. ONT.
Winnipeg
Seattle
Tacoma
Spokane
Portland
Olympia
Vancouver
Walla Walla
Wallace
Sand Point
Missoula
Helena
Butte
Billings
Livingston
Gardner
Glendive
Terry
Miles City
Bismarck
Jamestown
Fargo
Grand Forks
International Falls
Duluth
Superior
Ashland
Brainerd
St. Cloud
Minneapolis
St. Paul
Stillwater
Mankato
Winona
La Crosse
Prairie du chien
Chicago
Cody
Sheridan
Lead
Edgemont
Wendover
Cheyenne
Alliance
O'Neill
Northport
Council Bluffs
Omaha
Lincoln
Grand Island
Kearney
Fort Dodge
Des Moines
Davenport
Rock Island
Burlington
Peoria
Keokuk
Quincy
Hannibal
Atchison
St. Joseph
Kansas City
St. Louis
E. St. Louis
Centralia
Pittsburg
Metropolis
Mexico
Trackage
Plumas
Palisade
Ogden
Salt Lake City
Provo
Sacramento
Oakland
Stockton
San Francisco
Glenwood Spgs.
Leadville
Boulder
Denver
Colorado Spgs.
Pueblo
Trinidad
Santa Fe
Raton
Sixela
Dalhart
Amarillo
Quanah
Wichita Falls
Stamford
Abilene
Ft. Worth
Cleburne
Waxahachie
Teague
Houston
Galveston
Texarkana
Fort Smith
Lake Charles
Port Arthur
Trackage Rights

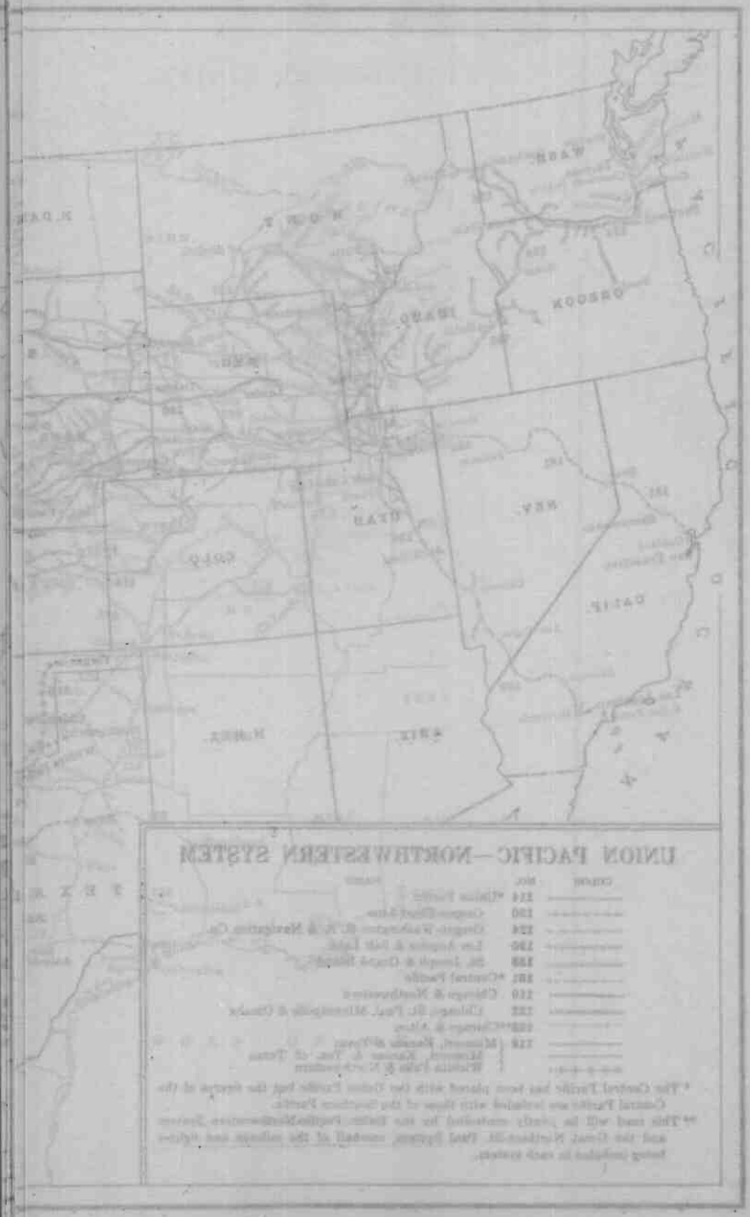


MAP 10

UNION PACIFIC–NORTHWESTERN SYSTEM



Map 10
UNION PACIFIC—NORTHWESTERN SYSTEM
COLOR
NO.
NAME
114 *Union Pacific
120 Oregon Short Line
124 Oregon-Washington R. R. & Navigation Co.
130 Los Angeles & Salt Lake
158 St. Joseph & Grand Island
181 *Central Pacific
110 Chicago & Northwestern
122 Chicago, St. Paul, Minneapolis & Omaha
125**Chicago & Alton
118 Missouri, Kansas & Texas
Missouri, Kansas & Tex. of Texas
Wichita Falls & Northwestern
* The Central Pacific has been placed with the Union Pacific but the figures of the Central Pacific are included with those of the Southern Pacific.
** This road will be jointly controlled by the Union Pacific-Northwestern System and the Great Northern-St. Paul System, one-half of the mileage and figures being included in each system.
Scale of Statute Miles
0 50 100 200 300 400 500
PACIFIC OCEAN
ATLANTIC OCEAN
GULF OF MEXICO
CUBA
WASH.
OREGON
CALIF.
NEV.
IDAHO
MONT.
WYO.
UTAH
COLO.
ARIZ.
N.MEX.
N.DAK.
S.DAK.
NEBR.
KANS.
OKLA.
TEXAS
MINN.
WIS.
MICH.
ILL.
IND
OHIO
MO.
ARK.
LA.
MISS.
ALA.
GA.
FLA.
TENN.
KY.
S.CAR.
N.CAR.
VA.
W.VA.
PENN.
N.Y.
MD.
DEL.
N.J.
CONN.
MASS.
VT.
N.H.
ME.
L.SUPERIOR
L.MICHIGAN
L.HURON
L.ERIE
L.ONT.
Seattle
Tacoma
Spokane
Portland
Vancouver
Walla Walla
Baker
Bend
Boise
Butte
Pocatello
Yellowstone
Ogden
Salt Lake City
Provo
Milford
Caliente
Las Vegas
Barstow
Riverside
Los Angeles
E.San Pedro
Reno
Sacramento
Oakland
San Francisco
Palisade
Granger
Lander
Laramie
Cheyenne
Denver
Julesburg
Rapid City
Pierre
Oakes
Duluth
Minneapolis
St.Paul
Winona
Mankato
Worthington
Mason City
Madison
Milwaukee
Green Bay
Escanaba
Chicago
Galena
Cedar Rapids
Des Moines
Council Bluffs
Omaha
Lincoln
O'Neill
Norfolk
Fremont
Grand Island
Kearney
Hastings
Superior
Marysville
St.Joseph
Kansas City
Hamibal
Topeka
Colby
Peoria
Springfield
Bloomington
Alton
E.St.Louis
St.Louis
Ft.Scott
Parsons
Joplin
Guthrie
Forgan
Oklahoma City
Wellington
Wichita Falls
Muskogee
Mc Alester
Durant
Denison
Dallas
Waco
Rotan
Shreveport
Colmesneil
Austin
San Antonio
Houston
Galveston
Trackage Rights



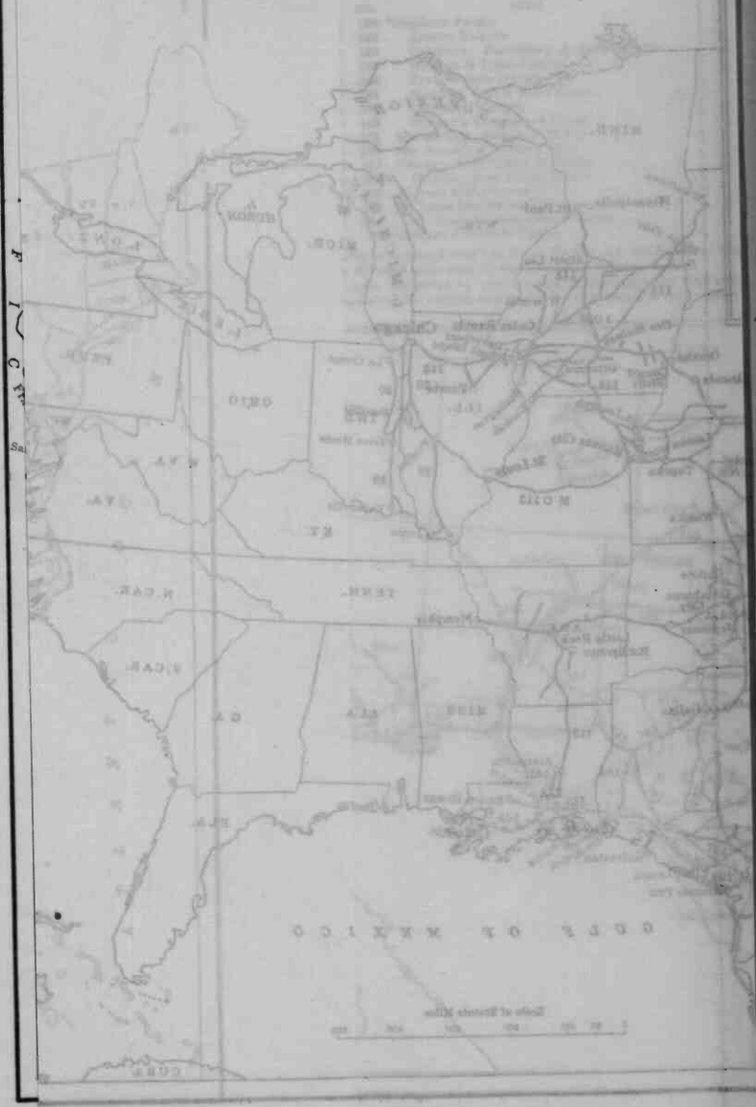
MAP 11

ATCHISON SYSTEM

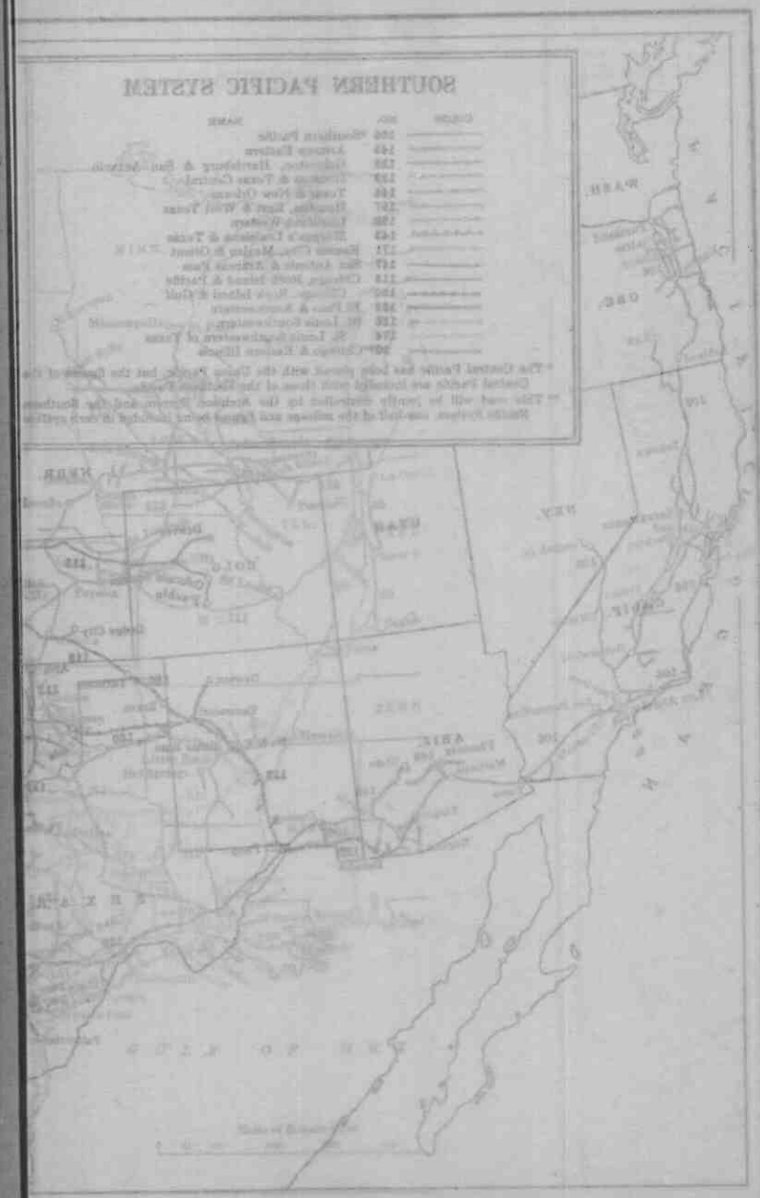

Map 11
ATCHISON SYSTEM
COLOR NO. NAME
107 Atchison, Topeka & Santa Fe
145 Northwestern Pacific
141 Panhandle & Santa Fe
126 Gulf, Colorado & Santa Fe
20 *Chicago & Eastern Illinois
123 Texas & Pacific
123a New Orleans, Texas & Mexico
123b St. Louis, Brownsville & Mexico
134 International & Great Northern
119 Missouri Pacific
117 St. Louis, Iron Mountain & Southern
* This road will be jointly controlled by the Atchison System and the Southern Pacific System, one-half of the mileage and figures being included in each system.
Scale of Statute Miles
0 50 100 200 300 400 500
PACIFIC OCEAN
ATLANTIC OCEAN
GULF OF MEXICO
CUBA
WASH.
OREGON
IDAHO
MONT.
N.DAK.
S.DAK.
WYO.
NEBR.
IOWA
MINN.
WIS.
MICH.
ILL.
IND.
OHIO
PENN.
N.Y.
VT.
N.H.
ME.
MASS.
CONN.
R.I.
N.J.
MD.
DEL.
W.VA.
VA.
KY.
TENN.
N.CAR.
S.CAR.
GA.
ALA.
MISS.
FLA.
LA.
ARK.
MO.
KANS.
COLO.
UTAH
NEV.
CALIF.
ARIZ.
N.MEX.
OKLA.
TEXAS
L.SUPERIOR
L.MICHIGAN
L.HURON
L.ERIE
L.ONT.
Eureka
San Francisco
Oakland
Fresno
Bartow
Los Angeles
San Bernardino
San Diego
Grand Canyon
Prescott
Phoenix
Santa Fe
Albuquerque
Rincon
El Paso
Denver
Colorado Springs
Canon City
Pueblo
Trinidad
Dodge City
Amarillo
Farwell
Lubbock
Sweetwater
Pecos
Brownwood
Temple
Austin
San Antonio
Bloomington
Robtown
Laredo
Samfordyce
Brownsville
Houston
Galveston
Matagorda
E. Columbia
Beaumont
Valley Jc.
Ft. Worth
Dallas
Texarkana
Alva
Enid
Guthrie
Oklahoma City
Fort Smith
Little Rock
Helena
Memphis
Natchez
Baton Rouge
New Orleans
Ft. Scott
Springfield
Poplar Bluff
Cairo
Joppa
Evansville
Terre Haute
La Crosse
Chicago
Ancona
Pekin
St. Louis
E. St. Louis
Jefferson City
St. Joseph
Topeka
Omaha
Hastings
Superior
Wichita

MAP 12

SOUTHERN PACIFIC SYSTEM



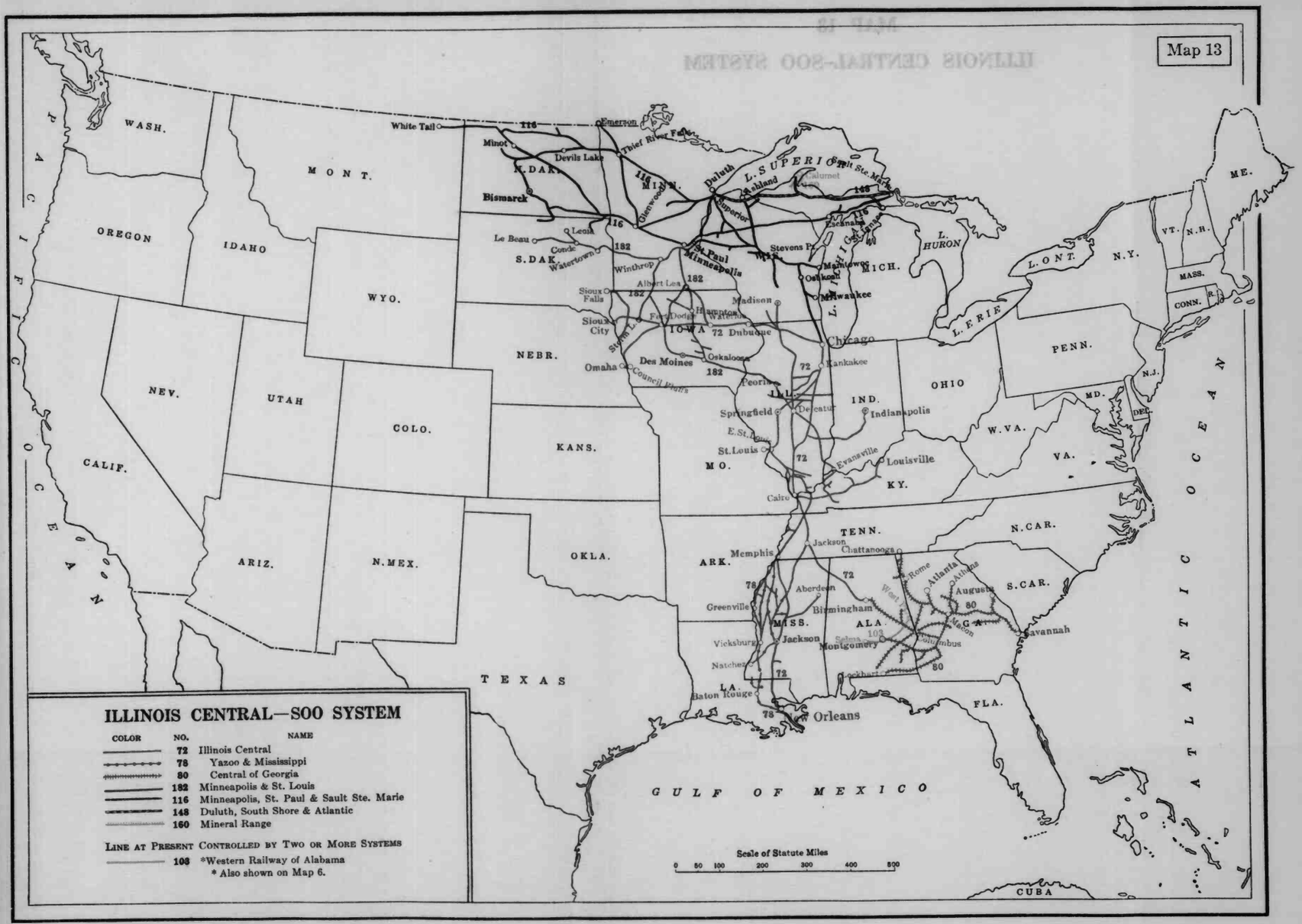

SOUTHERN PACIFIC SYSTEM
COLOR NO. NAME
106 *Southern Pacific
149 Arizona Eastern
128 Galveston, Harrisburg & San Antonio
139 Houston & Texas Central
144 Texas & New Orleans
167 Houston, East & West Texas
152 Louisiana Western
143 Morgan's Louisiana & Texas
171 Kansas City, Mexico & Orient
147 San Antonio & Aransas Pass
113 Chicago, Rock Island & Pacific
150 Chicago, Rock Island & Gulf
132 El Paso & Southwestern
136 St. Louis Southwestern
174 St. Louis Southwestern of Texas
20** Chicago & Eastern Illinois
* The Central Pacific has been placed with the Union Pacific, but the figures of the Central Pacific are included with those of the Southern Pacific.
** This road will be jointly controlled by the Atchison System and the Southern Pacific System, one-half of the mileage and figures being included in each system
Map 12
WASH.
ORE.
CALIF.
NEV.
UTAH
ARIZ.
N. MEX.
COLO.
NEBR.
KANS.
OKLA.
TEXAS
MINN.
IOWA
MO.
ARK.
LA.
WIS.
ILL.
MICH.
IND.
OHIO
KY.
TENN.
MISS.
ALA.
GA.
FLA.
S.CAR.
N.CAR.
VA.
W.VA.
PENN.
N.Y.
VT.
N.H.
MASS.
CONN.
R.I.
ME.
N.J.
MD.
DEL.
L. SUPERIOR
L. MICHIGAN
L. HURON
L. ERIE
L. ONT.
PACIFIC OCEAN
ATLANTIC OCEAN
GULF OF MEXICO
CUBA
Portland
Salem
Albany
Eugene
Ashland
Kirk
Tehama
Sacramento
Oakland
San Francisco
San Jose
Stockton
Tonopah Jc.
Fresno
Kreyer
Bakersfield
Pasadena
Los Angeles
San Bernardino
Riverside
Phoenix
Maricopa
Globe
Yuma
Tucson
Nogales
Douglas
Deming
El Paso
Alpine
San Angelo
Austin
San Antonio
Eagle Pass
Beeville
Falfurrias
Aransas Pass
Lavaca
Galveston
Houston
Port Arthur
Beaumont
Orange
Lake Charles
Alexandria
Baton Rouge
New Orleans
Shreveport
Marshall
Texarkana
Dawson
Tucumcari
Bravo
Endee
Santa Rosa
Dodge City
Alva
Wichita
Salina
Topeka
Kansas City
St. Joseph
Leavenworth
Omaha
Council Bluffs
Lincoln
Denver
Colorado Springs
Pueblo
Guthrie
Oklahoma City
McAlester
Ft. Worth
Dallas
Waco
Sherman
Denison
Hot Springs
Little Rock
Memphis
Watertown
Minneapolis
St. Paul
Sioux Falls
Albert Lea
Waterloo
Cedar Rapids
Des Moines
Davenport
Rock Island
Ottumwa
Keokuk
Burlington
Peoria
Chicago
La Crosse
Terre Haute
Danville
Evansville
Joppa
St. Louis
Scale of Statute Miles
0 50 100 200 300 400 500



MAP 13

ILLINOIS CENTRAL–SOO SYSTEM

Map 13



ILLINOIS CENTRAL—SOO SYSTEM

COLOR	NO.	NAME
	72	Illinois Central
	78	Yazoo & Mississippi
	80	Central of Georgia
	182	Minneapolis & St. Louis
	116	Minneapolis, St. Paul & Sault Ste. Marie
	148	Duluth, South Shore & Atlantic
	160	Mineral Range

LINE AT PRESENT CONTROLLED BY TWO OR MORE SYSTEMS

	103	*Western Railway of Alabama

* Also shown on Map 6.

END OF
TITLE